United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-7030

United States Court of Appeals
For the Second Circuit

Docket No. 75-7030

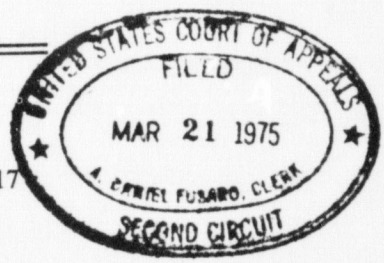
FRIGITEMP CORP., GERALD LEE, GERALD ROSS, HENRY GUTMAN and LEON GUTTMAN,
Plaintiffs-Appellants,

against

FINANCIAL DYNAMICS FUND, INC., FINANCIAL INDUSTRIAL FUND, INC., FINANCIAL VENTURE FUND, INC., FINANCIAL PROGRAMS, INC., ROBERT E. ANTON and JOHN M. BUTLER,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX



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UNITED STATES DISTRICT COURT

INDEX NO. 74 CIV. 1835

Jury demand date: Pltff-3/25/74

D. C. Form No. 104 Rev.

TITLE OF CASE	ATTORNEYS 12-31-74
FRIGITEMP CORP., GERALD LEE, GERALD ROSS, HENRY GOTTMAN AND LEON GUTTMAN Vs FINANCIAL DYNAMICS FUND, INC. financial industrial fund, inc. FINANCIAL VENTURE FUND, INC. FINANCIAL PROGRAMS, INC., ROBERT E. ANTON and JOHN M. BUTLER	For plaintiff: Blackman, Lefrak, Hyman & Feld 424 Madison Ave. NYC 10017 421-763 For defendant: Butowsky, Schwenke & Devine 230 Park Ave. NYC 10017 725-5360

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO	REC.	FEE.
J.S. 5 mailed X	Clerk		3/25/74	Blackman &	15 —	
			3/26/74	H Sm	—	15 —
J.S. 6 mailed ✓	Marshal					
Basis of Action: Securities Act of 1933 & Exchange Act of 1934. Breach of Agreement.	Docket fee					
	Witness fees					
Action arose at:	Depositions					

FEB 27 1975
DANIEL FUSARO, CLERK
SECOND CIRCUIT

DATE	PROCEEDINGS
Mar.29-74	Filed complaint and issued summons.
Apr.4-74	Filed Summons with Marshal's Returns.Served:
	Financial Dynamics Fund,Inc.by John H.Butler,Secy on 3/28/74
	Financial Venture Fund,Inc. " " " " " " "
	Financial Programs,Inc. " " " " " " "
	Robert E.Anton,personally on 4/2/74
	John M.Butler " " 3/28/74
Apr.30-74	Filed Defts Affdvt of Notice of Motion for an order staying [illegible] dismissing complaint,etc.ret.5/10/74.
Apr.30-74	Filed Defts Affdvt by Alan Steinberg in support of Motion.
Apr.30-74	Filed Defts Memorandum of Financial Dynamics Fund,Inc. [illegible] in support of Motion to dismiss&strike pursuant to Rules 12(b)(6)and 9(b)FRCP or in the alternative to transfer action to U.S.District Court ,Colorado,28 USC,1404(a)
Apr.30-74	Filed Exhibits to Memorandum of Law in support of Motion by [illegible]
Apr.1-74	Filed Pltff's Notice of Deposition of Robert E.Anton et al.
May 7-74	Filed Motion to Dismiss as to Deft.John M.Butler that Court lacks jurisdiction.
May 7-74	Filed Memorandum of Law in support of motion to dismiss as to Deft. John M.Butler.
May 7-74	Filed Joinder in Memorandum of Law in support of motion to dismiss as to deft .John M.Butler.
May 7-74	Filed Certificate of Mailing & hand service of Motion to dismiss as to deft.John M.Butler;R.E.Anton,Joinder in Motion and Memorandum of Law of Financial Dynamics Fund,Inc.etc. upon Butowsky,Schwenke&Devine&Gorsuch,Kirgis,Campbell,Walker & Grover on 5/6/74
May 7-74	Filed Memorandum of Law in support of Motion to quash notice of deposition and for protective orders pursuant to FRCP,Rule 26(c)
May 7-74	Filed Motion to quash notice of deposition and for protective orders pursuant to FRCP,Rule 26(c)
May 7-74	Filed Motion to dismiss as to Deft.Robert E.Anton.
May 7-74	Filed Affdvt of John M.Butler.
May 7-74	Filed Joinder in motion and Memorandum of Law of Financial Dynamics Fund,Inc.,Financial Industrial Fund,Inc.and Financial Venture Fund,Inc.to dismiss&strike complaint ,etc.or in alternative to transfer to USDC,Colorado.
May 7,74	Filed Memorandum of Law in support of Motion to dismiss as to Deft. John M.Butler
[illegible]	[illegible]
May 7-74	Filed Stip&Order extending time of all defts to answer or move [illegible] TENNEY,J.
May 8-74	Filed Notice to dismiss&strike complaint.
May 13-74	Filed Suppl.Certificate of Hand Service to Blackmar,Lefcourt,Marcus,Feld,attys for pltff by Jack Graitzer of Registered [illegible] Company;a true & correct copy of Suppl.Certificate of Hand Service placed in US Mail addressed to Modesitt,Devine&Gorsuch 5/9/74.
May 16-74	Filed Defts Amended Affdvt in support of motion with Affdvt of Service.
May 17-74	Filed Pltff's Affdvt in opposition to motion of defts. [illegible] Dynamics Fund,Inc.,Financial Ind.Fund,Inc.&Financial Venture Fund,Inc. or in the alternative to transfer to Colorado,pursuant to

(contd page 2)

DATE	PROCEEDINGS	Date Of Judgment
May 17,74	Contd. 28 USC,1404(A)	
21/74	Filed pltff's memo of law in opposition to defts' motion to dismiss and strike the complaint pursuant to Rules 11,12 (b)(6) and 9(b) of the FRCP or in the alternative to transfer action.	
21/74	Filed pltffs' memo of law in opposition to motion of defts Anton and Butler to dismiss for lack of jurisdiction and in opposition to motion to quash notice of deposition.	
21/74	Filed affdvt in opposition to motions of defts Financial Programs,Inc. Robert E. Anton and John M. Butler.	
31-74	Filed Defts Affdvt&Notice of Motion for an order staying pltffs' depositions of defts Financial Dynamics Fund,Inc.;Financial Industrial Fund,Inc.&Financial Venture Fund,Inc.until not less than 10 days after entry of an order deciding motions made by these defts,etc.ret.6/3/74.	
31-74	Filed Memorandum in support of motion of fund defts for protective Orders.	
31-74	Filed Defts Reply Affdvt in support of motion.	
31-74	Filed Reply Memorandum of Fund Defts in support of Motion to dismiss.	
5-74	Filed " " of Law in support of Motion to dismiss as to Defts. Robert E.Anton&John M.Butler and in support of Motion to quash Notice of Deposition on behalf of Defts.Financial Programs,Inc. Robert E.Anton&John M.Butler.	
10-74	Filed Pltff's Affdvt by G.D.Fischer in opposition to motion of defts.Financial Ind.Fund,Inc. et al for protective order striking notice of deposition served by Pltffs.	
14-74	Filed MEMORANDUM OPINION# 40823. Taking of all depositions will be stayed until 10 days after filing of an order which disposes of the motions to dismiss or transfer the action.TENNEY,J.(mn)	
6-74	Filed OPINION#41536.Defts'motion to dismiss all four claims set forth in complaint is granted.So Ordered,Tenney,J.(mn)	
12-74	Filed JUDGMENT.Ordered that defts Financial Dynamics Fund,Inc.et al have judgment against Pltffs et al dismissing all 4 claims of complaint. JUDGMENT ENTERED. 12/12/74 (mn) ENT: 12/12/74	
31-74	Filed Pltff's Notice of Appeal from an order of Tenney,J.dated 12/5/74 and a judgment on or about 12/12/74 granting defts'motion to dismiss complaint for failure to state a claim for which relief can be granted and pltff's appeal from each and every part of said order and judgment .(mailed notice to Butowsky, Shwenke&Devine & Skadden,Arps,Slate,Meagher & Flom on 1/2/74)	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By
Deputy Clerk

Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

———o———

FRIGITEMP CORP., GERALD LEE, GERALD ROSS, HENRY GUTMAN and LEON GUTTMAN,

Plaintiffs,

against

FINANCIAL DYNAMICS FUND, INC., FINANCIAL INDUSTRIAL FUND, INC., FINANCIAL VENTURE FUND, INC., FINANCIAL PROGRAMS, INC., ROBERT E. ANTON and JOHN M. BUTLER,

Defendants.

———o———

Plaintiffs, by their attorneys, Blackman Lefrak Myerson & Feld, complaining of the defendants, allege:

JURISDICTION

1. Plaintiff Frigitemp Corp. ("Frigitemp") is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the City of New York.

2. Plaintiffs Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman are residents of the State of New York.

3. Defendants Financial Dynamics Fund, Inc., Financial Industrial Fund, Inc. and Financial Venture Fund, Inc. (hereinafter sometimes collectively referred to as "The Funds") are all mutual funds and corporations organized and existing under the laws of the State of Colorado, with their principal places of business in the State of Colorado.

4. Defendant Financial Programs, Inc. is a corporation organized and existing under the laws of the State of Colorado with its principal office in the State of Colorado and is the investment adviser to The Funds.

5. Defendants Robert E. Anton and John M. Butler were at all relevant times and are officers and employees of the defendant corporations and are residents of the State of Colorado.

6. The Funds are investment companies regulated by the Investment Company Act of 1940.

7. All of the plaintiffs are citizens of the State of New York and all of the defendants are citizens of the State of Colorado. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

8. This action arises, *inter alia*, under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240. 10b-5, promulgated thereunder, under Section 20(a), of the Securities Exchange Act of 1934, 15 U.S.C. § 75t(a), under Setion 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q (a), and under the common law.

9. Jurisdiction is conferred on this Court by Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, by Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v, by the provisions of 28 U.S.C. § 1331 and 28 U.S.C. § 1332.

Facts Alleged With Respect to All Causes of Action

10. On or about January 15, 1969 Frigitemp made an initial offering to the public of 5,000 units, consisting of an aggregate of 80,000 shares of its common stock, $250,000 5% subordinated debentures convertible into 50,000 shares of common stock and warrants to purchase 50,000 shares of common stock.

11. From March 1969 through 1971 the defendants conspired with each other and with John R. Hurley, James Frankenthaler and James Gassafackas, who were officers and employees of defendant Financial Programs, Inc. and with Bernard Deutsch to commit the following acts and transactions as part of a scheme and plan to defraud the plaintiffs and the shareholders of Frigitemp.

12. Between March 1969 and March 1970 The Funds purchased in the open market common stock of Frigitemp as follows:

Financial Dynamics Fund, Inc.	70,000 shares
Financial Industrial Fund, Inc.	20,000 shares
Financial Venture Fund, Inc.	52,100 shares
Total shares purchased by The Funds	142,100 shares

13. As a result of the foregoing purchases The Funds acquired all but a small part of the shares of common stock of plaintiff Frigitemp then available to the public.

14. The purpose of the defendants' conspiracy in causing The Funds to purchase all but a small part of the shares of common stock of Frigitemp available to the public was to artificially increase the market price of such shares.

15. As a result of the purchases by The Funds of all but a small part of the shares of common stock of Frigitemp available to the public, the market price of its common stock rose from $15.25 to $37 per share.

16. In addition, and on or about August 29, 1969, Financial Venture Fund purchased from Frigitemp $1,000,000 principal amount 5% convertible subordinated debenture due 1984 and warrants to purchase 50,000 shares of Frigitemp's common stock until September 12, 1972 at prices between $17 and $19 per share for $1,000,000. This transaction is hereafter referred to as the "Private Placement."

17. At and prior to the time of the aforesaid open market purchases of the common stock and in connection with the Private Placement of Frigitemp, the defendants and John R. Hurley, James Frankenthaler, James Gassafackas and Bernard Deutsch acquired from Frigitemp material, confidential and "inside" information concerning the business and affairs of Frigitemp.

18. The material, confidential and "inside" information obtained by the defendants consisted of, among other things, the following:

(a) That Frigitemp was about to engage and in fact was engaged in a program of corporate acquisitions and internal expansion;

(b) That an agreement was being negotiated to acquire and that Frigitemp had acquired on July 28, 1969 the Rath Company, the holders of patents to manufacture temperature and humidity controlled systems for containerized and other shipping;

(c) That an agreement was being negotiated to acquire and that Frigitemp had acquired in October 1969 R & H Metal Products Corp., a manufacturer of hospital and marine refrigeration equipment and food service equipment;

(d) That an agreement was being negotiated to acquire and that Frigitemp had acquired on June 16, 1970 Labequipco, Inc., a distributor of laboratory and hospital refrigeration, casework and furnishings;

(e) That an agreement was being negotiated to acquire and that Frigitemp had acquired on November 20, 1969 Special Projects, Inc., a manufacturer of fiberglass seating, paneling, planters and constructions for special interior effects;

(f) That as of August 29, 1969, a larger percentage of Frigitemp's sales and backlog was accounted for by hospital and environmental control and equipment units than that set forth in Frigitemp's prospectus of January 14, 1969;

(g) That officers, directors and employees of Frigitemp were to contribute and did contribute 100,000 shares of its common stock owned by them to the capital of Frigitemp thereby immediately reducing by that number its outstanding shares and increasing the earnings per share and book value

per share for the shares remaining outstanding, including those available to the public.

19. Based upon the confidential and inside information, The Funds purchased the aforesaid 142,100 shares of common stock of Frigitemp.

20. At the time of the Private Placement, and as a condition thereof, defendants Financial Venture Fund, Inc., Financial Programs, Inc., Robert E. Anton and John M. Butler required plaintiffs Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman, officers, directors and employees of Frigitemp, to contribute an aggregate of 100,000 shares to the capital of Frigitemp, thereby reducing by that number the shares of Frigitemp then outstanding.

21. In connection with the Private Placement and the contribution of 100,000 shares of the common stock of Frigitemp to its capital required as a condition thereof, defendants failed to disclose to plaintiffs Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman the material facts:

(a) that defendants were causing and had caused The Funds to acquire all but a small part of the shares of Frigitemp available to the public;

(b) that the condition that Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman contribute to the capital of Frigitemp 100,000 of its outstanding shares of common stock then held by said plaintiffs, was intended to reduce the number of shares outstanding by that number and cause an immediate increase in earnings per share and book value per

share for the 142,100 shares of Frigitemp's common stock then owned by and to be acquired by The Funds.

22. On September 3, 1969, at the time of the contribution to the capital of Frigitemp of 100,000 shares of its common stock by plaintiffs Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman, the market price for such shares was $21 per share.

23. Had plaintiffs Gerald Lee, Gerald Ross, Henry Gutman, and Leon Guttman known of the facts alleged in paragraph 21 herein they would not have contributed their 100,000 shares of Frigitemp to its capital.

24. In February 1970 Financial Venture Fund, Inc. sold a total of 11,000 shares at an average price of approximately $28 per share, resulting in a substantial profit, the exact amount being presently unknown, but not less than $60,000.

25. In March 1970, Financial Dynamics Fund, Inc. sold 7,000 shares of common stock of Frigitemp at prices ranging between $35 and $36 per share, resulting in a substantial profit, the exact amount being presently unknown, but not less than $70,000.

26. As a result of the increase in the market price of the shares of Frigitemp, the net asset value of The Funds increased and defendant Financial Programs, Inc. received increased investment advisory fees from The Funds.

27. In 1971 The Funds sold 123,000 shares of Frigitemp and depressed the price of the stock to $8 per share,

thereby causing substantial damages to the remaining shareholders of Frigitemp.

28. On May 9, 1973 there was commenced in the United States District Court for the Southern District of New York an action entitled *Betty Kaye* v. *Gerald Lee, Mervyn Silver, Gerald Ross, Joseph Heilbrun and Frigitemp Corp.* (73 Civ. 2052). Said action is allegedly a class action claimed to be brought on behalf of all persons who have purchased shares of Frigitemp and who have incurred losses as a result of said purchases. Those losses may be directly attributed to the misuse of material, confidential and "inside" information and the wrongful manipulation of the market price of the common stock of Frigitemp by the defendants, as aforesaid. Defendant Frigitemp has incurred substantial expenses, including legal expenses, in defending the aforesaid action, and may be liable to the plaintiffs therein, in an amount presently unknown, by reason of the acts of defendants.

29. The acts of the defendants, as aforesaid, were engaged in, directly and indirectly by them in the City of New York and by the use of means and instrumentalities of interstate commerce and of the mails. Defendants used and employed, in connection with the purchase or sale of a security, devices, schemes and artifices to defraud and defendants made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and defendants engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiffs.

FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF FRIGITEMP

30. The allegations of paragraphs 1 through 29 are hereby repeated and realleged herein.

31. The acts of defendants as aforesaid were knowingly performed with an intent to deceive and constituted a fraud and deceit against plaintiff Frigitemp and its shareholders and constituted an unlawful manipulation of the price of the shares of Frigitemp and a misuse of inside and confidential information thereby damaging the continued public acceptance and marketability of the shares of Frigitemp and caused serious and substantial damage to Frigitemp and its shareholders.

32. By reason of the foregoing, plaintiff Frigitemp requests that the defendants pay to it the following:

(a) All profits realized in connection with the purchase and sale of Frigitemp shares, in an amount not less than $130,000, and

(b) All investment advisory fees realized by Financial Programs, Inc. by the increase in the net asset value of the funds attributable to the value of the Frigitemp shares;

(c) All commissions or other fees received by the defendants in connection with trading in the shares of Frigitemp;

(d) All damages, settlements, and expenses incurred in connection with Frigitemp's defense of *Kaye* v. *Lee, et al.* allegedly brought on behalf of its shareholders who claim to have lost money in trading in the shares of Frigitemp;

(e) Punitive damages of $1,000,000.

FOR A SECOND CAUSE OF ACTION ON BEHALF OF PLAINTIFF FRIGITEMP

33. The allegations of paragraphs 1 through 32 of this complaint are hereby repeated and realleged herein.

34. The wrongful acts of defendants as aforesaid constituted violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240. 10b-5, promulgated thereunder, and of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

35. By reason of the foregoing, plaintiff Frigitemp requests that the defendants pay to it the following:

(a) All profits realized in connection with the purchase and sale of Frigitemp shares, in an amount not less than $130,000, and

(b) All management fees realized by Financial Programs, Inc. by the increase in the net asset value of the funds attributable to the value of the Frigitemp shares, and

(c) All commissions or other fees received by the defendants in connection with trading in the shares of Frigitemp, and

(d) All damages, settlements, and expenses incurred in connection with Frigitemp's defense of *Kaye* v. *Lee, et al.* brought by or on behalf of its shareholders who claim to have lost money in trading in the shares of Frigitemp, and

(e) Punitive damages of $1,000,000.

FOR A THIRD CAUSE OF ACTION ON BEHALF OF PLAINTIFFS GERALD LEE, GERALD ROSS, HENRY GUTMAN AND LEON GUTTMAN

36. The allegations of paragraphs 1 through 35 of this complaint are hereby repeated and realleged herein.

37. The wrongful acts of defendants as aforesaid constituted violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder, and of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

38. By reason of the foregoing, plaintiffs Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman request that the defendants pay to them $21 per share for their 100,000 shares or a total of $2,100,000, together with punitive damages of $1,000,000.

FOR A FOURTH CAUSE OF ACTION ON BEHALF OF PLAINTIFFS GERALD LEE, GERALD ROSS, HENRY GUTTMAN AND LEON GUTTMAN

39. The allegations of paragraphs 1 through 38 of this complaint are hereby repeated and realleged herein.

40. The acts of defendants as aforesaid were knowingly performed with an intent to deceive and constituted a fraud and deceit against plaintiffs Gerald Lee, Gerald Ross, Henry Guttman and Leon Guttman.

41. By reason of the foregoing, plaintiffs Gerald Lee, Gerald Ross, Henry Guttman and Leon Guttman request that the defendants pay to them $21 per share for their 100,000 shares or a total of $2,100,000, together with punitive damages of $1,000,000.

WHEREFORE, judgment is demanded against defendants, jointly and severally, as follows:

I. In favor of plaintiff Frigitemp in an amount to be fixed by the Court on the basis of:

(a) All profits realized in connection with the purchase and sale of Frigitemp shares, in an amount not less than $130,000, and

(b) All management fees realized by Financial Programs, Inc. by the increase in the net asset value of the funds attributable to the value of the Frigitemp shares, and

(c) All commissions or other fees received by the defendants in connection with trading in the shares of Frigitemp, and

(d) All damages, settlements, and expenses incurred in connection with Frigitemp's defense of *Kaye* v. *Lee, et al.* allegedly brought by or on behalf of its shareholders who claim to have lost money in trading in the shares of Frigitemp, and

(e) Punitive damages of $1,000,000.

II. In favor of plaintiffs Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman in the sum of $2,100,000 together with punitive damages of $1,000,000, together with the costs and disbursements of this action.

Dated: New York, New York
March 22, 1974

BLACKMAN LEFRAK MYERSON & FELD
Attorneys for Plaintiffs

By s/LLOYD D. FELD
A Member of the Firm
424 Madison Avenue
New York, New York 10017
(212) 421-7633

Notice of Motion to Dismiss or to Transfer on Behalf of Fund Defendants

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

PLEASE TAKE NOTICE that upon the annexed affidavits of John M. Butler, Esq., Charles L. Powell and Alan Steinberg, Esq., sworn to April 29, 1974, and all other papers and proceedings herein, the undersigned will move this Court before Honorable Charles H. Tenney, at Room 1904, United States Courthouse, 40 Foley Square, New York, New York, on May 10, 1974, at 10:00 A.M., or as soon thereafter as counsel can be heard, for an order:

(a) pursuant to Rule 11 of the Federal Rules of Civil Procedure striking the complaint because it was signed with wilful intent to defeat the purpose of Rule 11, in that the complaint is sham, not supported by good ground and was interposed for delay; and

(b) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the complaint for failure to state a claim upon which relief can be granted; and

(c) pursuant to Rule 9(b) of the Federal Rules of Civil Procedure dismissing the complaint because the circumstances constituting the alleged fraud are not stated with particularity; or

Notice of Motion to Dismiss or to Transfer on Behalf of Fund Defendants

(d) in the alternative to paragraphs (a), (b) and (c) above, pursuant to 28 U.S.C. § 1404(a), transferring this action to the United States District Court for the District of Colorado; and

(e) granting such other relief as the Court deems proper.

Dated: New York, N.Y.
April 30, 1974

BUTOWSKY, SCHWENKE & DEVINE

By /s/ Michael C. Devine
A member of the firm
Attorneys for defendants
Financial Dynamics Fund, Inc.
Financial Industrial Fund, Inc.
Financial Venture Fund, Inc.
230 Park Avenue
New York, N. Y. 10017
(212) 725-5360

GORSUCH, KIRGIS, CAMPBELL, WALKER & GROVER
(Denver counsel)

To: BLACKMAN, LEFRAK, MYERSON & FELD
Attorneys for plaintiffs
424 Madison Avenue
New York, N.Y. 10017

Affidavit of Alan Steinberg in Support of Fund Defendants Motion to Dismiss

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

ALAN STEINBERG, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the District of Columbia. On or about December 7, 1973, I was retained by the firm of Butowsky, Schwenke & Devine, to conduct a study, in conjunction with that firm, as special counsel for and on behalf of Financial Industrial Fund, Inc., Financial Venture Fund, Inc., Financial Dynamics Fund, Inc., and Financial Industrial Income Fund, Inc., (hereinafter referred to collectively as the "Funds"). The purpose of this study was to: (a) advise the Boards of Directors of the Funds of the facts and circumstances surrounding the purchase ar ' sale of the securities of Frigitemp Corp. ("Frigitemp") and certain other issuers in which the Funds suffered substantial losses; and (b) to make recommendations to the respective Boards of the Funds regarding the remedies the Funds might have in connection with the purchase and sale of the securities of Frigitemp and certain other issuers.

2. In late December, 1973, and early January, 1974, I attempted to contact Mr. Gerald Lee, President of Frigi-

temp, to discuss the repurchase by Frigitemp in or about April, 1972, of a privately placed Frigitemp debenture (with warrants attached) then owned by Financial Venture Fund, Inc. A meeting with Mr. Lee was initially scheduled for January 8, 1974. Upon the request of Mr. Lee and/or counsel for Frigitemp, this meeting was cancelled and alternatively a meeting was arranged for January 16, 1974, with one Lloyd Feld of the law firm of Blackman, Lefrak, Myerson & Feld. This firm holds itself out and appears in fact to represent Frigitemp, Lee and certain other officers and directors of Frigitemp.

3. On January 16, 1974, I met with Mr. Feld in his office at 424 Madison Avenue, New York, New York. I explained that my purpose in requesting the meeting was to discuss the repurchase by Frigitemp in April, 1972, of a Frigitemp debenture then owned by Financial Venture Fund, Inc.

4. During the course of our discussions regarding this matter, and quite out of context of my original inquiry, Mr. Feld stated that the Funds were plaintiffs in an action against Frigitemp. When I stated that I was unaware of any such suit, Mr. Feld advised of an action entitled *Kaye* v. *Lee*, 73 Civ. 2052 (SDNY 1973), and stated that as a proposed class action, the Funds were in effect plaintiffs therein. Mr. Feld went on to explain his concern about the *Kaye* v. *Lee* action and inquired whether the Funds, as potential members of a proposed class action, would formally decline to have their interests represented in that suit. I advised that I was not in a position to make any decision regarding that issue. Mr. Feld also discussed the reasons

for his request as well as his views on the effect of the Funds formally withdrawing from the *Kaye* v. *Lee* action. In substance, it was Mr. Feld's view that his bargaining power would be greatly strengthened in that case if the Funds declined to have their interests represented therein.

5. Mr. Feld went on to advise me of and discuss an SEC injunctive action which alleged numerous violations of the Federal securities laws (including fraud and manipulation) against Frigitemp, its president and chairman, and certain other officers and directors of that company in connection with the issuance, distribution and trading in the securities of Frigitemp. (*SEC* v. *Frigitemp Corp., et al.*, Civ. No. 596-73 D.D.C. 1973). Mr. Feld advised that the matter was disposed of by virtue of the defendants therein consenting to the entry of permanent injunctions. Mr. Feld indicated that he represented the defendants in that case and was well aware of the facts and circumstances therein. Upon request, Mr. Feld provided me with copies of the complaint for injunction, the final judgment of permanent injunction and the consents of the defendants.

6. During the course of the meeting Mr. Feld and I also discussed the indictment returned in *U. S.* v. *Deutsch, et al.*, 74 Cr. 22 (SDNY 1974). Mr. Feld indicated that he was aware of the case but did not have a copy of the indictment. I had received a copy several days earlier and accordingly provided Mr. Feld with one. The relevance of the aforementioned indictment to our discussions derived from the fact that the indictment, in essence, charges Bernard Deutsch and Stanley DuBoff with fraudulently inducing the Funds to purchase large blocks of Frigitemp

securities and manipulating the market in said securities resulting in substantial losses to the Funds. The indictment also charges Deutsch and DuBoff with obtaining a secret payoff from the president of Frigitemp in exchange for the defendants help in selling shares of his Frigitemp stock. In addition, the indictment charges Deutsch and DuBoff with issuing a false prospectus relating to a Frigitemp public offering, which failed to disclose among other things that Deutsch and DuBoff were acting as underwriters in the Frigitemp offering.

7. During this meeting, Mr. Feld also inquired whether the Funds intended to independently assert any claims against Frigitemp. I advised Mr. Feld that I had only recently begun to examine the Frigitemp matter and had not yet made any final determinations in that regard. I added that if such valid claims did in fact exist, perhaps we could save our respective clients' time and expense by effecting a settlement without litigation. Mr. Feld indicated that this was greatly in accord with his own thinking. In this regard, Mr. Feld indicated that Frigitemp was either in the process of, or about to enter, negotiations with an insurance company for a substantial loan and that a law suit by the Funds against Frigitemp might compromise the ability of Frigitemp to successfully consummate that transaction.

8. I indicated to Mr. Feld at some point during the January 16th meeting, that I wanted to see the Funds recover the losses they sustained in the Frigitemp securities. Mr. Feld inquired as to the extent of these losses and I advised that they were approximately $2 million. Mr. Feld

indicated that Frigitemp's financial condition was such that it could not very well sustain a large cash settlement and inquired whether the Funds might consider a settlement in which Frigitemp offered some package of its securities. In this regard Mr. Feld stated that Frigitemp was presently a very different company than the one which existed in 1969 and 1970, when the Funds made their purchases of Frigitemp securities. I stated to Mr. Feld that I considered his suggestion a creative one, with possibilities, but that I would have substantial reservations in recommending that type of settlement in light of the facts that: (a) the Funds had previously suffered substantial losses on their investments in Frigitemp; and (b) there was some evidence that the Funds' losses resulted from their being victims of a fraud. Mr. Feld pursued the possibility of this type of settlement with me and I advised that if this approach offered the Funds the best opportunity of being made whole, I would be duty-bound to pursue it, notwithstanding the "cosmetic" problem I had with the Funds going back into a security in which they apparently had previously been defrauded.

9. On February 11, 1974, I met with Mr. Feld at his office. During the course of this meeting I again advised Mr. Feld of the substantial losses sustained by the Funds in Frigitemp securities. In addition, I stated that based upon my review of the facts and circumstances surrounding the Funds investments in these securities, it was my view that the Funds had valid causes of action for fraud and breach of contract against Frigitemp and certain of its officers. Mr. Feld stated that he felt Frigitemp had certain defenses to an action by the Funds and a discussion regarding those possible defenses followed. At no

time did Mr. Feld suggest or imply that Frigitemp or its affiliates had any claims against the Funds.

10. During this meeting I presented a proposed plan of settlement to Mr. Feld along the lines he had initially suggested, i.e., a settlement in which the Funds would receive primarily debt and equity securities of Frigitemp in settlement of their claims. I advised Mr. Feld that I would be prepared to recommend such a proposal to the Boards of the Funds, *provided* that the Funds investment adviser was satisfied as to the investment merits of the Frigitemp securities, and I had the concurrence of the Funds regular counsel.

11. In discussing the Funds' claims in further detail, Mr. Feld requested additional information regarding the Funds' transactions in Frigitemp's common stock. I advised Mr. Feld of the approximate periods of time when the Funds purchased and sold Frigitemp shares as well as the approximate prices at which such shares were purchased and sold. I also explained that there were a few isolated transactions in which the Funds had generated a profit but that the Funds had sustained overall losses aggregating approximately $2 million on its investments in Frigitemp.

12. During the course of this meeting Mr. Feld again expressed his concern about the *Kaye* v. *Lee* action and urged that the Funds not become part of the proposed class in that suit. I advised that I would not recommend that the Funds formally move to be excluded from the proposed class at that time. Mr. Feld also indicated that he planned to advise plaintiff's counsel in *Kaye* v. *Lee*

that he was attempting to privately settle the claims of a large member of the proposed class. Mr. Feld also requested more detailed information regarding the Funds' investments in Frigitemp which he indicated would be useful in dealing with plaintiff's attorney in *Kaye* v. *Lee*. I declined to provide such information.

13. During the weeks following the February 11, 1974, meeting, I had a number of telephone conversations with Mr. Feld. During these conversations Mr. Feld advised, in substance, that the proposal which I had made would be unacceptable primarily because the issuance of a substantial number of Frigitemp shares which was contemplated by my proposal would dilute the earnings per share of Frigitemp and would adversely affect Frigitemp's balance sheet. In addition, Mr. Feld alluded to certain tax problems which Frigitemp appeared to have in connection therewith.

14. In light of the fact that it appeared that we were making little pregress toward effecting a pre-litigation settlement of the Funds' claims, I advised Mr. Feld that I would recommend to the Board of Directors of the Funds that they authorize counsel to pursue these claims. I stated to Mr. Feld that if the Boards authorized such action, I would nevertheless advise him prior to the filing of any legal action in a final effort to resolve the Funds' claims without litigation.

15. On February 28, 1974, I received a telephone call from Mr. Feld in which he requested that I arrange a meeting in Denver between certain principal officers of

Frigitemp and representatives of the Funds and their investment adviser. Mr. Feld stated his request to be for the purpose of permitting the principals of Frigitemp to acquaint the Funds' representatives with Frigitemp's present operations as well as its future prospects and potential. Mr. Feld indicated that he hoped this meeting would ultimately lead to a resolution of the Funds' claims. Mr. Feld also requested that this meeting be solely for the purpose of acquainting the Funds with Frigitemp and not to discuss the Fund's legal claims. After discussing the matter with Mr. John M. Butler, Secretary of the Funds and Executive Vice President of the Funds investment adviser (Financial Programs, Inc.), such a meeting was arranged. It is my understanding that such meeting did in fact take place on March 5, 1974.

16. On March 20, 1974, I met with Mr. Feld and his partner, Mr. Lefrak, at their request, to consider a proposal which they had formulated in an apparent attempt to resolve the Fund claims against Frigitemp and certain of its officers. This meeting took place in the office of Mr. Lefrak at 424 Madison Avenue, New York City. In substance, their proposal contemplated an ostensible "guaranteed" 18% annual return on a proposed substantial investment by the Funds in a company which would be formed to factor Frigitemp's accounts receivable.

17. I advised Messrs. Feld and Lefrak that I would: (a) present their proposal to the Boards of Directors of the Funds on March 25, 1974, in Denver but could not recommend that the Boards accept their offer; and (b) recommend that the Boards authorize the Funds regular counsel

to commence legal action against Frigitemp and certain of its officers.

18. On March 28, 1974, I received a copy of plaintiff's complaint together with a covering letter from Mr. Feld advising that the instant action had been filed on March 25, 1974. After reading the complaint, I called Mr. Feld and stated that in my view his initiation of the Frigitemp complaint constituted a moral and ethical outrage. Mr. Feld stated that he had had absolutely no thought or intention of initiating any action against the defendants herein until I had advised him on March 20, 1974, that I could not recommend acceptance of their firm's settlement proposal of the Funds' claims and would recommend that the Boards of the Funds authorize the Funds regular counsel to commence legal action against Frigitemp and certain of its officers.

19. At no time during the conversations and meetings I had with members of the firm of Blackman, Lefrak, Myerson & Feld did any member of that firm suggest or imply that Frigitemp or any of its affiliates had any legal claims or basis for initiating any legal action against the defendants herein.

/s/ Alan Steinberg
Alan Steinberg

(Sworn to by Alan Steinberg on April 29, 1974.)

Affidavit of John M. Butler in Support of Fund Defendants Motion to Dismiss

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

STATE OF COLORADO }
COUNTY OF DENVER } ss.:

JOHN M. BUTLER, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of Texas and am presently employed as the Secretary of Financial Industrial Fund, Inc., Financial Dynamics Fund, Inc., and Financial Venture Fund, Inc. (hereinafter called the "Funds"), and also as Executive Vice President of Financial Programs, Inc. (hereinafter called "Programs").

2. In or about late January, 1974, Alan Steinberg, special counsel to the Funds, advised me of a meeting that he recently had with Lloyd Feld, of Blackman, Lefrak, Myerson & Feld, counsel for Frigitemp Corporation (hereinafter called "Frigitemp"), in which Mr. Feld informed him of Frigitemp's desire to amicably settle claims that the Funds had arising from sizable losses incurred on their investments in Frigitemp securities during the period 1969 through 1972. Mr. Steinberg indicated that Mr. Feld was particularly interested in settling the claims without litigation because of a pending private financing by Frigitemp.

Affidavit of John M. Butler in Support of Fund Defendants Motion to Dismiss

3. I told Mr. Steinberg that he was free to pursue negotiations concerning the claims.

4. In the course of those negotiations Mr. Steinberg stated that Mr. Feld had expressed a desire that if possible, any settlement agreement not involve sizable amounts of cash and questioned whether or not the Funds might consider a settlement of the claims where they would receive debt and equity securities of Frigitemp. Mr. Steinberg and I agreed that in light of our previous experience it would be extremely difficult to justify an additional investment in Frigitemp particularly since the management remained the same as those individuals named in the Securities and Exchange Commission injunctive action. Nevertheless, in light of Frigitemp's cash position and our desire to see that the Funds recoup all their losses, we felt it was our responsibility to explore all possible opportunities.

5. Mr. Steinberg indicated that Mr. Feld had advised him that the Frigitemp Corporation was presently a much more solid company than during the period of time when the Funds first purchased the Frigitemp securities and that it could be in the Funds best interests to consider settlement along the proposed lines which also would prevent costly litigation.

6. In the latter part of February, 1974, Mr. Steinberg called to relay a request on behalf of the principals of Frigitemp that they be allowed to come to Denver to meet with us to review and discuss the business prospects of Frigitemp. I told Mr. Steinberg that there was little or no use in such a meeting unless certain specific financial infor-

mation customarily required by potential investors could be made available. Mr. Steinberg told me that he would advise Mr. Feld accordingly. Mr. Steinberg also told me that Mr. Feld had requested that no attorneys be present but would allow me to be there so long as the Fund's claims were not discussed.

7. The meeting was arranged and held in Denver on March 5, 1974. Present representing Frigitemp were: Gerald Lee; Mervyn Silver; Joseph Heilbrun, and Thomas Ryan. Donald Campbell, Charles Powell, myself and William Clark represented the Funds and Programs.

8. The meeting proceeded amicably. Mr. Lee made a presentation concerning Frigitemp, past and present, and we discussed such matters as the pending financing; Frigitemp's revolving line of credit; their relationship with Loeb Rhoades; their recent change of auditors and their corporate restructuring in accordance with the Securities and Exchange Commission injunctive action. Mr. Ryan went through a sales presentation describing Frigitemp's activities in refurnishing ships for the United States Navy in its habitability program. Frigitemp's officers left with our assurances that we would pursue our analysis as to the investment quality of their company and to that end they left a number of documents concerning Frigitemp with us.

9. On the basis of our preliminary analysis it appeared that there might some merit in an investment of some kind in Frigitemp in settlement of the Funds' claims without litigation.

Affidavit of John M. Butler in Support of Fund Defendants Motion to Dismiss

10. Subsequent to the meeting of March 5th, Mr. Steinberg informed me of Mr. Feld's factoring proposal which required an out-of-pocket cash investment by the Funds of $2 million. The offer appeared not to be in good faith and was diametrically opposed to previous indications by Mr. Feld as to Frigitemp's intention to amicably settle the Funds' claims. I told Mr. Steinberg that it appeared that our analysis into the investment merit of Frigitemp had been in vain. Mr. Steinberg and I concurred that he could not in good faith recommend to the Funds' Boards of Directors that the questionable offer be accepted.

JOHN M. BUTLER

(Sworn to by John M. Butler on April 29, 1974.)

Affidavit of Charles L. Powell in Support of Fund Defendants Motion to Dismiss

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

STATE OF COLORADO }
COUNTY OF DENVER } ss.:

CHARLES L. POWELL, being duly sworn, deposes and says:

I am Vice President of Financial Industrial Fund, Inc. (FIF); Financial Industrial Income Fund, Inc. (FIIF); Financial Venture Fund, Inc. (FVF); and Financial Dynamics Fund, Inc. (FDF).

During the period between 1969 and 1972, the aforementioned funds sustained the following net losses: Financial Dynamics Fund, Inc., $774,530.02; Financial Venture Fund, $815,520.13; Financial Industrial Fund, Inc., $409,646.65.

CHARLES L. POWELL

(Sworn to by Charles L. Powell on April 29, 1974.)

(d) That defendant Frigitemp would not [illegible]

Exhibit A in Support of Fund Defendants Motion to Dismiss:

Complaint in Financial Venture Fund, Inc., et al. v. Frigitemp Corporation, et al., U.S.D.C., D. Colo. 74 Civ. 277

UNITED STATES DISTRICT COURT
DENVER, COLORADO
MAR 26 1974
JAMES R. MANSPEAKER

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 74-277

32a

FINANCIAL VENTURE FUND, INC., a Colorado corporation, FINANCIAL DYNAMICS FUND, INC., a Colorado corporation, and FINANCIAL INDUSTRIAL FUND, INC., a Maryland corporation,

Plaintiffs,

v.

FRIGITEMP CORPORATION, a New York corporation, GERALD [illegible], MERVYN SILVER, GERALD ROSS, and JOSEPH HEILBRUN,

Defendants.

COMPLAINT

PLAINTIFF DEMANDS TRIAL BY JURY

Plaintiffs, by their attorneys, Gorsuch, Kirgis, Campbell, Walker and Grover, allege upon information and belief, except as to Paragraphs 2, 11, 12, and 17 hereof which are alleged upon knowledge:

JURISDICTION

1(a). The jurisdiction of the Court is based upon Section 22(a) of the Securities Act of 1933, as amended (Securities Act); Section 27 of the Securities Exchange Act of 1934, as amended (Exchange Act); and the principles of pendent jurisdiction.

(b). The claims alleged herein arise under the Securities Act, the Exchange Act, the rules and regulations of the Securities and Exchange Commission (Commission), promulgated thereunder, and common law principles.

(c). The acts and transactions constituting the violations alleged herein occurred in substantial part in the District of Colorado.

PARTIES

2. The plaintiffs, Financial Venture Fund, Inc. (FVF), Financial Dynamics Fund, Inc. (FDF), and Financial Industrial Fund, Inc. (FIF), are corporations with principal offices located at 900 Grant Street, Denver, Colorado. At all times herein mentioned, FVF, FDF, and FIF have been registered with the Commission as diversified management investment companies commonly known as mutual funds.

3. The defendant, Frigitemp Corporation (Frigitemp), is a New York corporation with executive offices located at 121 East Eighteenth Street, New York, New York 10003, and its principal place of business at 329 Herzl Street, Brooklyn, New York 11212. Frigitemp is principally engaged in the design, supply, and installation of commercial, institutional, and marine interiors. Frigitemp's common stock, warrants, and debentures are traded nationally in the over-the-counter market.

4. The defendant Gerald Lee (Lee) resides at 145 East 16th Street, New York, New York, and has been at all times relevant to this action chairman of the board of directors and president of Frigitemp.

5. The defendant Mervyn Silver (Silver) resides at 12 Bayliss Road, Rockville Center, Long Island, New York, and has been at all times relevant to this action a director, executive vice president, and secretary of Frigitemp.

6. The defendant Gerald Ross (Ross) resides at 7 Hawke Lane, Rockville Center, Long Island, New York, and has been at all times relevant to this action a director and vice president of Frigitemp.

7. The defendant Joseph Heilbrun (Heilbrun) resides at 200 East 58th Street, New York, New York. Heilbrun has been an employee of Frigitemp since on or about July 1, 1971, and has been a director and treasurer of Frigitemp since on or about November 1971. Prior to his employment with Frigitemp, he was an employee and officer of Samson International Corporation (Samson).

COUNT I

Section 17(a) of the Securities Act and
Section 10(b) of the Exchange Act and
Rule 10b-5 as promulgated thereunder
(Antifraud Provisions)

8. The allegations of Paragraphs 1 through 7 are realleged and incorporated herein by reference.

9. During the period from approximately January 1, 1969, through April 30, 1972, defendants Frigitemp, Lee, Silver, Ross, a Heilbrun singly and in concert, directly and indirectly in connection with purchases and sales of securities of defendant Frigitemp, by use of the means and instrumentalities of interstate commerce and the mails, employed devices, schemes, and artifices to defraud, made untrue statements of material fact, and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the plaintiffs. The violations complained of coalesced in a continuous and sustained course of conduct which artificially manipulated the price of Frigitemp securities. Said course of conduct included but was not limited to the following acts and practices:

(a) The underwriting of the initial public offering of Frigitemp securities was implemented by covert arrangements, including unconscionable payments by defendants to certain undisclosed participants therein, designed to promote the sale of the initial offering and manipulate the price of the securities in the after market, such arrangements including but not limited to the following particulars:

(1) Early in 1968, defendants Lee, Silver, and Ross made several unsuccessful attempts to arrange for a public offering of securities of defendant Frigitemp. One Joseph Marando (Marando), who was employed by defendant Frigitemp as a salesman for its products and services, offered to aid defendant Frigitemp in arranging for public offering of its securities.

(2) In the summer of 1968, through the efforts of Marando and a New York attorney contacted by Marando, defendant Frigitemp was introduced to Bernard Deutsch (Deutsch), a registered representative of Jaffee & Company, a New York broker-dealer, for the purpose of arranging a public offering of defendant Frigitemp's securities.

(3) In January 1969, following several meetings between Deutsch and defendants Lee, Silver, and Ross, Deutsch arranged for defendant Frigitemp's initial public offering of its securities with Alessandrini and Co., Inc., a New York broker-dealer.

(4) The public offering of defendant Frigitemp's securities, which was structured by Deutsch, consisted of

5,000 units, each unit consisting of 16 shares of common stock, a $50.00 5% convertible subordinated debenture, and 10 warrants, each warrant representing the right to purchase one share of common stock at $10.00 per share. Each unit of Frigitemp's securities sold for a price of $150.00 with net proceeds to defendant Frigitemp of approximately $643,000 and the possibility of an additional $500,000 upon the exercise of the warrants.

(5) During the course of arranging the said public offering, Deutsch represented to defendant Lee that he (Deutsch) would have control over the offering of defendant Frigitemp's securities and that it would be a "hot issue" and that the price would double.

(6) As compensation for his efforts in arranging and structuring the public offering of defendant Frigitemp's securities, and as a method of assuring his support of a trading market for said securities, Deutsch was given the right to designate certain individuals to purchase 129,500 unregistered shares of defendant Frigitemp's common stock at thirty cents (30¢) per share immediately prior to the public offering. Individuals so designated by Deutsch were his business associates and relatives, who did in fact purchase the 129,500 unregistered shares of defendant Frigitemp's common stock at thirty cents per share.

(7) As compensation for bringing Deutsch and defendant Frigitemp together in connection with the public offering of defendant Frigitemp's securities, Marando was given the right to purchase and did purchase 50,000 unregistered shares of defendant Frigitemp's common stock from defendant Lee for fifteen cents (15¢) per share.

(8) Transfer restrictions initially affecting all of the shares described in Paragraph (6) were removed based upon opinions of defendant Frigitemp's outside counsel that those shares could be legally sold to the public, and 45,000 of such shares were sold in open market transactions. Subsequent to the sale of said shares, defendant Frigitemp's outside counsel withdrew his opinions and defendant Frigitemp notified its transfer agent to stop the transfer of the remaining shares.

(b) In connection with the public offering of defendant Frigitemp's securities as described in Paragraph (a)(4) above, defendants Lee, Silver, and Ross participated in the preparation of a prospectus dated January 15, 1969, which was materially false and misleading in that:

(1) While it disclosed that Alessandrini and Co., Inc., was the underwriter for defendant Frigitemp in the public offering, it failed to disclose that the public offering of defendant Frigitemp's securities was also underwritten by and through the efforts of Deutsch; and

(2) While it disclosed certain underwriting discounts and commissions to be paid to Alessandrini and Co., Inc., as underwriter for defendant Frigitemp's public offering and the issuance of 129,500 shares of defendant Frigitemp's common stock "to five individuals at a price of $.30 per share," it failed to disclose that said 129,500 shares were

issued as underwriting compensation to Deutsch and further failed to disclose that the defendant Lee sold 50,000 shares of his personal holdings of Frigitemp common stock to Marando for fifteen cents (15¢) per share as compensation to Marando for his part in arranging the underwriting of defendant Frigitemp's public offering.

(c) In the spring of 1969, the defendant Lee approached Deutsch to seek Deutsch's assistance in selling 6,000 unregistered shares of defendant Lee's personal holdings of Frigitemp's common stock. Deutsch informed Lee that he (Deutsch) was actively engaged in supporting the market for Frigitemp's securities but that he (Deutsch) would arrange a sale through another New York brokerage firm without affecting the market price of Frigitemp's securities if Lee agreed to make an undisclosed cash payment of $20,000 to Deutsch and a business associate. Thereafter, Deutsch arranged the sale for Lee, and Lee paid Deutsch and his associate $20,000.

(d) In 1969 and 1970, in connection with defendant Frigitemp's efforts to obtain two major contracts to provide kitchen facilities for two leisure time operations, defendants Ross and Silver each sold 9,000 unregistered shares of their personal holdings of defendant Frigitemp's common stock, and a portion of the proceeds were paid to Marando, to be disbursed by Marando, for the purpose of influencing the award of these two major contracts to defendant Frigitemp.

(e) In July 1971, defendant Frigitemp acquired Samson International Corporation (Samson), which was engaged in the business of designing, supplying, and installing interior

contract furnishings and kitchen and food service facilities. Prior to the acquisition of Samson by defendant Frigitemp, defendant Heilbrun was an officer of Samson. In late 1970 or early 1971, during the course of discussions between Frigitemp and Samson which led to the said acquisition, defendant Heilbrun was told by Deutsch that plaintiff FVF had, as a part of its securities portfolio, substantial holdings of common stock of Frigitemp. In the spring of 1971, while discussions continued between defendant Frigitemp and Samson, defendant Heilbrun was told by Deutsch that a block of approximately 25,000 shares of defendant Frigitemp's common stock was available for sale. While in possession of material non-public information relating to the planned acquisition by defendant Frigitemp of Samson and the fact that the price of defendant Frigitemp's securities would be expected toincrease, defendant Heilbrun arranged with Deutsch to purchase the 25,000 share block of defendant Frigitemp's common stock through a nominee. In July 1971, defendant Heilbrun purchased approximately 17,000 additional shares of defendant Frigitemp's common stock while in possession of material non-public information relating to the planned acquisition. This purchase by defendant Heilbrun of the additional 17,000 shares of defendant Frigitemp's common stock was also arranged by Deutsch and effected through a nominee.

10. Not only did the acts, practices, and course of conduct of defendants Frigitemp, Lee, Silver, Ross, and Heilbrun described in Paragraph 9 above artificially manipulate

the market price of Frigitemp's securities and mislead and deceive the investing public including plaintiffs, but the secret arrangements and undisclosed payments to insiders were particularly and materially deceptive and misleading to plaintiffs in that

(a) Deutsch was personally engaged in soliciting plaintiffs' portfolio business and actively solicited orders for purchase and sale of Frigitemp's securities as well as securities of other issuers, and the defendants Frigitemp, Lee, Silver, Ross, and Heilbrun were well aware that Deutsch was so engaged in the solicitation of plaintiffs' business.

(b) The 6,000 unregistered shares of defendant Lee's personal holdings of Frigitemp's common stock sold without disclosure of a $20,000 fee paid for arranging such sale as described in Paragraph 9(c) above were purchased by plaintiff FDF in transactions effected through Deutsch.

(c) The 42,000 shares of Frigitemp common stock acquired by defendant Heilbrun while in possession of material non-public information relating to the planned acquisition by defendant Frigitemp of Samson as described in Paragraph 9(d) above were purchased in whole or substantial part from plaintiff FVF in transactions effected through Deutsch.

11. Over a period of approximately one year beginning in March 1969, plaintiffs purchased Frigitemp's securities in over-the-counter markets as follows:

(a) Between March 20, 1969, and July 24, 1969, FVF purchased 51,100 shares of Frigitemp common stock at a cost of $1,003,667.13, and 12,000 Frigitemp warrants at a cost of $103,062.50.

(b) Between April 8, 1969, and October 23, 1969, FDF purchased 70,300 shares of Frigitemp common stock at a cost of $1,487,427.32.

(c) Between December 18, 1969, and March 25, 1970, FIF purchased 20,000 shares of Frigitemp common stock at a cost of $574,707.15.

12. As a result of the aforementioned purchases, the plaintiffs sustained the following losses:

(a) Between December 17, 1969, and April 20, 1971, FVF sold the 51,100 shares of Frigitemp common stock and the 12,000 Frigitemp warrants for a total net loss of $315,520.13.

(b) Between March 4, 1970, and April 20, 1971, FDF sold the 70,300 shares of Frigitemp common stock for a net loss of $774,530.02.

(c) Between August 13, 1970, and February 25, 1971, FIF sold the 20,000 shares of Frigitemp common stock at a net loss of $409,646.65.

13. All of the purchases and sales of Frigitemp's securities described in Paragraphs 11 and 12 above were transacted in the over-the-counter markets and were confirmed to the plaintiffs at their offices in Denver, Colorado.

14. On or about August 29, 1969, defendants Frigitemp, Lee, Silver, and Ross arranged for the sale to plaintiff FVF, in a private placement transaction, of $1,000,000 in principal amount of defendant Frigitemp's 5% convertible subordinated debentures and warrants to purchase 50,000 shares of Frigitemp common stock at prices from $17 to $19 per share for which plaintiff FVF paid defendant Frigitemp $1,000,000 in cash.

15. The purchase of defendant Frigitemp's debentures and warrants as described in Paragraph 14 above operated as a

fraud and deceit upon plaintiff FVF in that

(a) Plaintiff FVF was unaware of the unlawful acts, practices, and course of business of defendants Frigitemp, Lee, Silver, and Ross as described in Paragraphs 9(a), 9(b), 9(c), and 9(d) above.

(b) Defendants Frigitemp, Lee, Silver, and Ross, in connection with the sale of said debentures and warrants to plaintiff FVF, made untrue statements of material fact and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, and, in particular, failed to disclose that out of the $1,000,000 cash proceeds of sale, the defendant Frigitemp was committed to pay finder's fee in the sum of $170,000.

16. The private placement of Frigitemp's debentures and warrants as described in Paragraphs 14 and 15 above was effected by use of the mails and other means and instrumentalities of interstate commerce.

17. On or about April 22, 1972, the plaintiff FVF sold the Frigitemp debentures for $500,000, resulting in a loss of $500,000. The warrants were never exercised.

18. The losses sustained by plaintiffs as described in Paragraphs 12 and 17 above were the proximate result of deceptive and manipulative acts and practices of the defendants Frigitemp, Lee, Silver, Ross, and Heilbrun, and in reliance upon the false and misleading representations of said defendants, and the assumption that trading of Frigitemp securities in the over-the-counter markets was free, competitive, and unmanipulated, and honestly reflected the fair market value of Frigitemp's securities being traded thereon.

19. Due to the concealment of material non-public information, including inducements and payments to insiders, plaintiffs, with the exercise of reasonable diligence, could not have discovered the same more than a short time prior to the commencement of this action.

COUNT II

Common Law Fraud and Deceit

20. The allegations of Paragraphs 1 through 19 above are realleged and incorporated herein by reference.

21. Defendants Frigitemp, Lee, Silver, Ross, and Heilbrun committed actionable fraud under common law principles in that said defendants:

(a) falsely represented materially existing facts;

(b) made representations as to material existing facts with reckless disregard of their truth or falsity;

(c) concealed material existing facts that in equity and good conscience should be disclosed;

(d) knew that said representations were false or were utterly indifferent to their truth or falsity and knew that they were concealing material facts that in equity and good conscience should be disclosed; and

(e) intended that the false and misleading representations and the concealment of material facts be acted upon by plaintiffs.

22. Plaintiffs had no knowledge of the defendants' false and misleading representations of material facts and had no knowledge of the existence of material facts which were concealed and acted upon said false representations and

concealment of material facts, as a proximate result of which plaintiffs were damaged in the sum of $1,999,696.80, as more particularly set forth in Paragraphs 12 and 17 above.

COUNT III

Breach of Contractual
Warranties and Covenants

23. The allegations of Paragraphs 1 through 22 are realleged and incorporated herein by reference.

24. In connection with the contract for the sale of defendant Frigitemp's debentures in the principal amount of $1,000,000 and 50,000 warrants to purchase Frigitemp's common stock to plaintiff FVF as described in Paragraph 14 above, defendant Frigitemp made certain representations, warranties, and covenants. Said representations, warranties, and covenants breached and violated by defendant Frigitemp, included, without limitation, the following:

(a) That defendant Frigitemp, to the best of its knowledge and belief, had complied in all material respects with all applicable statutes and regulations of the United States of America and of all states and municipalities or agencies of any thereof in respect of the conduct of its business.

(b) That defendant Frigitemp was not a party to or bound by any burdensome contract or instrument materially, adversely, and unusually affecting its business property or financial condition.

(c) That defendant Frigitemp had not either directly or indirectly made or caused to be made any private offering of its securities within the meaning of the Securities Act of 1933, except as set forth in a schedule to the purchase agreement.

(d) That defendant Frigitemp would not wilfully contravene any governmental laws, regulations, and rules applicable to it.

25. Plaintiff FVF entered into said contract to purchase defendant Frigitemp's debentures and warrants in reliance upon the representations, warranties, and covenants of defendant Frigitemp as described in Paragraph 24 above, and as a result thereof was damaged in the sum of $500,000.00.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment:

A. Awarding plaintiffs compensatory damages in the sum of $1,999,696.80.

B. Awarding plaintiffs punitive damages in the sum of $1,000,000.00.

C. Awarding plaintiffs the costs and expenses of this litigation, including reasonable attorneys fees.

D. Granting such other and further relief as may be just and equitable.

DATED March 28, 1974, at Denver, Colorado.

GORSUCH, KIRGIS, CAMPBELL,
WALKER AND GROVER

COPY ORIGINAL SIGNED Leland E. Modesitt

BY _____
Leland E. Modesitt, Partner
1900 Security Life Building
Denver, Colorado 80202
Telephone: 893-1000
ATTORNEYS FOR PLAINTIFFS

Address of Plaintiffs:

900 Grant Street
Post Office Box 2040
Denver, Colorado 80201

Exhibit B in Support of Fund Defendants Motion to Dismiss:

Complaint, Final Judgment, Consents and Plea in Securities and Exchange Commission v. Frigitemp Corp., et al., U.S.D.C., D.C 596-73

EXHIBIT B

FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-v-

FRIGITEMP CORP.,
GERALD LEE,
MERVYN SILVER,
GERALD ROSS, and
JOSEPH HEILBRUN,

Defendants.

596-73

COMPLAINT FOR INJUNCTION

FILED MAR 28 1973

The Plaintiff, SECURITIES AND EXCHANGE COMMISSION ("COMMISSION") for its Complaint respectfully alleges that:

1. The Defendants, FRIGITEMP CORP. ("FRIGITEMP"), GERALD LEE ("LEE"), MERVYN SILVER ("SILVER"), GERALD ROSS ("ROSS") and JOSEPH HEILBRUN ("HEILBRUN") have engaged, are engaged and are about to engage in acts and practices which constitute violations of Section 5 of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77(e)].

2. The Defendants FRIGITEMP, LEE, SILVER, ROSS and HEILBRUN have engaged and are engaged and are about to engage in acts and practices which constitute violations of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78j(b)] and Rule 10b-5 as promulgated thereunder [17 CFR 240.10b-5].

3. Plaintiff COMMISSION pursuant to Section 20(b) of the Securities Act [15 U.S.C. 77t(b)] and Sections 21(e) and (f) of the Exchange Act [15 U.S.C. 78u(e) and (f)], brings this action to restrain and enjoin such Defendants from engaging in such acts and practices.

4. The Defendants will unless restrained and enjoined continue to engage in acts and practices of similar purport and object.

5. This Court has jurisdiction of this action under Section 22(a) of the Securities Act [15 U.S.C. 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. 78aa].

6. Some of the acts and transactions constituting the violations alleged herein have occurred within the jurisdiction of the United States District Court for the District of Columbia.

DEFENDANTS

7. Defendant FRIGITEMP is a New York corporation with its principal place of business at 121 East 18th Street, New York, New York 10003. Defendant FRIGITEMP is principally engaged in the design, supply and installation of commercial, institutional and marine interiors. Defendant FRIGITEMP'S securities are traded in the over the counter market.

8. Defendant LEE who resides at 145 East 16th Street, New York, New York, has been Chairman of the Board of Directors and President of Defendant FRIGITEMP at all times relevant to this action.

9. Defendant SILVER who resides at 12 Bayliss Road, Rockville Center, Long Island, New York, has been a Director, Executive Vice President and Secretary of Defendant FRIGITEMP, at all times relevant to this action.

10. Defendant ROSS who resides at 7 Hawke Lane, Rockville Center, Long Island, New York, has been a Director and Vice President of Defendant FRIGITEMP at all times relevant to this action.

11. Defendant Heilbrun, who resides at 200 East 58th Street, New York, New York, has been an employee of Defendant FRIGITEMP since on or about July 1, 1971 and has been a Director and Treasurer of Defendant FRIGITEMP since on or about November 1971. Prior to his

employment with Defendant FRIGITEMP, here as an employee officer of Samson International Corporation ("Samson").

COUNT I

Section 17(a) of the Securities Act and Section 10b of the Exchange Act and Rule 10b-5 as Promulgated Thereunder (Anti-fraud Provisions)

12. The allegations of paragraphs 1 through 11 are realleged and incorporated herein by reference.

12A. During the period from approximately January 1, 1969 to date herein, Defendants FRIGITEMP, LEE, SILVER, ROSS and HEILBRUN singly and in concert, directly and indirectly, in connection with purchases and sales of securities of Defendant FRIGITEMP, by use of the means and instrumentalities of interstate commerce and the mails, have employed and are employing devices, schemes and artifices to defraud, have made and are making untrue statements of material fact and have omitted and are omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, and have been engaging in acts, practices and course of business which have operated and are operating as a fraud and deceit upon the shareholders of Defendant FRIGITEMP and other purchasers and sellers and prospective purchasers of Defendant FRIGITEMP'S securities. As part of the aforesaid violative conduct, false and misleading registration statements were filed with the Plaintiff COMMISSION as described in paragraphs 35 through 37 below; unregistered securities of Defendant FRIGITEMP were offered and sold as described in paragraphs 19, 20, 21, 22, 23, 27, 28 and 32 below; manipulations of the market of the securities of Defendant FRIGITEMP occurred as described in paragraphs 18, 23 and 32 below; and devices, schemes and artifices to defraud

were employed in connection with the payment by or on behalf of Defendant FRIGITEMP of monies in the form of undisclosed cash payment to induce the awarding of material contracts to Defendant FRIGITEMP for services to be performed or for goods to be delivered as described in paragraphs 24 through 30 below, without disclosure of these activities in the registration statement filed with the Plaintiff COMMISSION.

The Underwriting of the Initial Public Offering of Defendant FRIGITEMP'S Securities

13. In June 1968, Joseph Marando ("Marando") was employed by Defendant FRIGITEMP as a salesman for its products and services, and Marando continued in the employ of Defendant FRIGITEMP until mid-1972 when his employment relationship was terminated.

14. In early 1968, Defendants LEE, SILVER and ROSS commenced an effort to arrange for a public offering of the securities of Defendant FRIGITEMP. After several unsuccessful attempts to have a public offering, Marando offered his services to Defendant FRIGITEMP to aid it in arranging a public offering of its securities.

15. In the summer of 1968, Marando introduced Defendant FRIGITEMP to George Meissner ("G. Meissner"), a New York attorney. G. Meissner subsequently introduced Defendant FRIGITEMP to Bernard Deutsch ("Deutsch"), a registered representative of Jaffee & Company, a New York broker-dealer then registered with Plaintiff COMMISSION, in order to arrange a public offering of Defendant FRIGITEMP'S securities.

16. In January 1969, following several meetings between Deutsch and Defendants LEE, SILVER and ROSS, Deutsch arranged for Defendant FRIGITEMP'S initial public offering of its securities with Alessandrini & Co., a New York broker-dealer then registered with Plaintiff COMMISSION

17. The public offering of Defendant FRIGITEMP'S securities, which was structured by Deutsch, consisted of 5,000 units, each unit consisting of 16 shares of common stock, a $50 5% convertible subordinated debenture and 10 warrants, each warrant representing the right to purchase one share of common stock at $10 per share. Each unit of Defendant FRIGITEMP'S securities sold for a price of $150 with net proceeds to Defendant FRIGITEMP of approximately $643,000 and the possibility of an additional $500,000 upon the exercise of the warrants.

18. During the course of the activities described in paragraphs 16 and 17 above, Deutsch represented to Defendant LEE that he (Deutsch) would have control over the offering of Defendant FRIGITEMP'S securities, that it would be a "hot" issue and that the price would double.

19. As compensation for his efforts in arranging and structuring the public offering of Defendant FRIGITEMP'S securities and as a method for allowing him "to get involved" with Defendant FRIGITEMP, Deutsch was given the right to designate certain individuals to purchase 129,500 unregistered shares of Defendant FRIGITEMP'S common stock at $.30 per share immediately prior to the public offering.

20. The individuals designated by Deutsch in the transaction described in paragraph 19 above were:

(a) Mr. Abraham Litman, Deutsch's father-in-law, who purchased 40,000 shares of Defendant FRIGITEMP'S common stock. These shares were subsequently transferred to Mr. Harry Morginstin ("Morginstin"), Deutsch's brother-in-law;

(b) Mr. William Harris, the father-in-law of Stanley DuBoff ("DuBoff"), a business associate and partner of Deutsch, who purchased 40,000 shares of Defendant FRIGITEMP'S common stock;

(Mrs. Beverly Meissner ("Mrs. Meissner"), the wife of G. Meissner, who purchased 40,000 shares of Defendant FRIGITEMP'S common stock;

(d) Dr. George Krupp ("Krupp"), acting in part as a nominee for a business associate of Deutsch, who purchased 7,500 shares of Defendant FRIGITEMP'S common stock; and

(e) Mr. Stanley Ryback ("Ryback"), a friend of Messrs. Deutsch and DuBoff, who purchased 2,000 shares of Defendant FRIGITEMP'S common stock.

21. As compensation for bringing Deutsch and Defendant FRIGITEMP together in connection with the public offering of Defendant FRIGITEMP'S securities, Marando was given the right to purchase and purchased 50,000 unregistered shares of Defendant FRIGITEMP'S common stock from Defendant LEE for $.15 per share.

22. Transfer restrictions initially affecting all of the shares described in paragraph 20 above, were later removed, based upon opinions of Defendant FRIGITEMP'S outside counsel that these shares could be legally sold to the public. Since that time an aggregate of approximately 45,000 of such shares have been sold in open market transactions by Morginstin, Krupp, Ryback and B. Meissner. Subsequent to the sale of said shares, Defendant FRIGITEMP'S outside counsel withdrew his opinions and Defendant FRIGITEMP notified its transfer agent to stop the transfer of the remaining shares.

Sale of Unregistered Securities of Defendant FRIGITEMP by Defendant LEE

23. In the spring of 1969, he (Defendant LEE) approached Deutsch to seek Deutsch's assistance in selling 6,000 unregistered shares of his stock in Defendant FRIGITEMP

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to Defendant LEE that he (Deutsch) was actively engaged in supporting the market for Defendant FRIGITEMP securities and that he (Deutsch) could arrange the sale through the New York brokerage firm of Kelly, Andrews and Bradley, Inc., intimating that he could arrange said sale without affecting the market price of Defendant FRIGITEMP'S securities, if Defendant LEE agreed to make an undisclosed cash payment of $10,000 each to himself (Deutsch) and his business associate, DuBoff. Subsequently Deutsch arranged the sale for Defendant LEE and Defendant LEE paid Deutsch and DuBoff the $20,000.

Undisclosed Cash Payments in Connection with Defendant FRIGITEMP Obtaining Certain Contracts

24. In 1969 and 1970, Defendant FRIGITEMP was low bidder on two major contracts to provide kitchen facilities for two leisure time operations. In both instances, Defendant FRIGITEMP received indications that led it to believe that certain competitors of Defendant FRIGITEMP might be exercising undue influence to obtain the contracts, notwithstanding Defendant FRIGITEMP'S low bids.

25. Defendants LEE, ROSS and SILVER attempted to retain the major contracts described in paragraph 24 above for Defendant FRIGITEMP through normal channels but were unsuccessful. Defendants LEE, ROSS and SILVER then asked Marando for assistance based on Marando's representations that he could be helpful to Defendant FRIGITEMP in these matters.

26. Marando advised Defendants LEE, ROSS and SILVER that Defendant FRIGITEMP would be awarded the contracts if Defendant FRIGITEMP agreed to make substantial payments (calculated on a percentage

him to assist Defendant FRIGITEMP in influencing the awarding of these contracts.

27. In order to make the necessary payments to Marando, as described in paragraphs 25 and 26 above, Defendants LEE, ROSS and SILVER agreed that Defendants ROSS and SILVER should each sell 9,000 of their unregistered shares of Defendant FRIGITEMP'S common stock. Initially, Defendants LEE, SILVER and ROSS enlisted Deutsch's assistance to find a broker to sell said common stock. When Deutsch was unable to do so, Defendants LEE, ROSS and SILVER arranged with Marando to have Marando introduce Akiyoshi Yamada ("Yamada") to Defendants LEE, SILVER and ROSS and to have Marando and Yamada arrange for the firm of F. M. Mayer & Co., to act as broker for the sale of the shares.

28. Defendants SILVER and ROSS each sold 9,000 shares of said common stock through F. M. Mayer & Co., and a portion of these proceeds were paid to Marando, pursuant to the arrangements described in paragraphs 25 through 27 above.

29. In July 1971, Defendant FRIGITEMP acquired Samson which was engaged in the business of designing, supplying and installing interior contract furnishings and kitchen and food service facilities. Prior to its acquisition, Samson had long-standing arrangement with Fred Griswold ("Griswold"), President of Fred Griswold & Co. ("Griswold & Co."), whereby in exchange for Griswold & Co. awarding Samson major contracts for its products and services, Samson would make undisclosed cash payments to Griswold of approximately 10% of the gross amount of the particular contract as a condition for Samson being awarded the contracts.

30. Subsequent to the acquisition of Samson by Defendant FRIGITEMP, Defendant FRIGITEMP continued the arrangement of making undisclosed cash payments to Griswold as described in paragraph 29 above.

Transactions in Defendant FRIGITEMP'S Securities by Defendant HEILBRUN

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31. Prior to the acquisition by Defendant FRIGITEMP of Samson, Defendant HEILBRUN was an officer of Samson. In late 1970 or early 1971, during the course of discussions between Defendant FRIGITEMP and Samson which led to the acquisition described in paragraph 29 above, Defendant HEILBRUN was told by Deutsch that Financial Venture Fund ("FVF") had, as part of its securities portfolio, substantial holdings of the common stock of Defendant FRIGITEMP. In the spring of 1971, while discussions continued between Defendant FRIGITEMP and Samson, Defendant HEILBRUN was told by Deutsch that a block of approximately 25,000 shares of Defendant FRIGITEMP'S common stock was available for sale.

32. While in possession of material non-public information relating to the planned acquisition by Defendant FRIGITEMP of Samson as described in paragraph 29 above and the fact that the price of Defendant FRIGITEMP'S securities would be expected to increase, Defendant HEILBRUN arranged with Deutsch to purchase the 25,000 share block of Defendant FRIGITEMP'S common stock through a nominee. In July 1971, Defendant HEILBRUN purchased approximately 17,000 additional shares of Defendant FRIGITEMP'S common stock, while in possession of the material non-public information relating to the planned acquisition by Defendant FRIGITEMP of Samson. This purchase by Defendant HEILBRUN of the additional 17,000 shares of Defendant FRIGITEMP'S common stock was also arranged by Deutsch and effected through a nominee.

Transactions by Defendant FRIGITEMP in its Unregistered Securities

33. In September 1969, Deutsch arranged on behalf of Defendant FRIGITEMP a placement with FVF of $1,000,000 in principal amount of Defendant FRIGITEMP'S 5% convertible subordinated debentures and

warrants to purchase 50,000 shares of its common stock at prices from $17 to $19 per share, for which Defendant FRIGITEMP received $1,000,000 in proceeds. As compensation to Deutsch for arranging this private placement Defendant FRIGITEMP was obligated to pay a $130,000 commission to Deutsch which it subsequently paid to a corporation at the direction of Deutsch.

34. In late 1971, Deutsch offered to arrange for Defendant FRIGITEMP to repurchase its securities previously sold to FVF as described in paragraph 33 above, at a price of $750,000. After considerable discussions with Deutsch, Defendant FRIGITEMP repurchased these securities in April 1972 from Intercontinental Investment and Finance Corporation (which had previously acquired rights to purchase these securities from FVF through Deutsch). Defendant FRIGITEMP paid $550,000 in cash to repurchase said securities and issued 4,000 shares each to Deutsch and DuBoff as a commission for arranging the transaction for Defendant FRIGITEMP.

False and Misleading Registration Statements

35. In connection with the public offering of Defendant FRIGITEMP'S securities as described in paragraphs 16 and 17 above, Defendants LEE, SILVER and ROSS participated in the preparation of a prospectus dated January 15, 1969, which was materially false and misleading in that:

(a) While it disclosed that Alessandrini and Company, Inc. was to be the underwriter for Defendant FRIGITEMP in the public offering, it failed to disclose that the public offering of Defendant FRIGITEMP'S securities was also underwritten by and through the efforts of Deutsch; and

(b) While it disclosed certain underwriting discounts and commissions to be paid to Alessandrini and Company, Inc. as underwriter for Defendant FRIGITEMP'S public offering and the issuance of 129,500

shares of [illegible] common stock, it failed to disclose:

(i) That the 129,500 shares of Defendant FRIGITEMP'S common stock issued as described in Paragraphs 19 and 20 above were issued as underwriting compensation to Deutsch; and

(ii) That Defendant LEE sold 50,000 shares of his common stock of Defendant FRIGITEMP to Marando for $ .15 per share, as compensation to Marando for his part in arranging the underwriting of Defendant FRIGITEMP'S public offering.

36. On June 28, 1972, Defendant FRIGITEMP filed with the Plaintiff COMMISSION a registration statement in connection with the sale to the public of 250,000 shares of Defendant FRIGITEMP'S common stock. Defendants LEE, ROSS, SILVER and HEILBRUN participated in the preparation of said registration statement, which has not been declared effective by Plaintiff COMMISSION.

37. The registration statement described in paragraph 36 above is materially false and misleading in that:

(a) It failed to disclose that a payment of a $130,000 commission was made to Deutsch in connection with the sale of securities that Deutsch arranged on behalf of Defendant FRIGITEMP as described in paragraph 33 above;

(b) While it disclosed the 1969 sale to FVF of Defendant FRIGITEMP'S securities described in paragraph 33 above, it failed to adequately disclose that said securities had been repurchased by Defendant FRIGITEMP and that a commission of 8,000 shares of Defendant FRIGITEMP'S common stock was paid to Messrs. Deutsch and DuDoff for arranging said repurchase.

(c) It failed to disclose the sale by Defendant LEE of 6,000 unregistered shares of his Defendant FRIGITEMP common stock

DuBoff in connection with said sale as is described in paragraph 23 above;

(d) It failed to disclose the substantial cash payments to Marando to be disbursed by him to assist Defendant FRIGITEMP in influencing the award of these contracts and the sales of unregistered securities by Defendants ROSS and SILVER in connection with certain contracts of Defendant FRIGITEMP as more fully described in paragraphs 24 through 28 above.

(e) It failed to disclose that Defendant FRIGITEMP had a continuing arrangement with Griswold to make cash payments to Griswold in an amount equal to approximately 10 percent of the gross amount of the contracts awarded to Defendant FRIGITEMP through Griswold as is more fully described in paragraphs 29 and 30 above.

38. In connection with the activities described in paragraphs 12 through 37 above, Defendants FRIGITEMP, LEE, SILVER, ROSS and HEILBRUN, singly and in concert, made use, directly and indirectly, of the instruments of transportation or communication in interstate commerce or of the means or instrumentalities of interstate commerce or the mails.

39. By reason of the activites described in paragraphs 12 through 38 above, Defendants FRIGITEMP, LEE, ROSS, SILVER and HEILBRUN directly and indirectly, singly and in concert violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunde

COUNT II

Section 5 of the Securities Act (Registration Provisions)

40. Paragraphs 1 through 36 above are realleged and incorporated herein by reference.

41. Defendants FRIGITEMP, LEE, SILVER, ROSS and HEILBRUN have been and are now, directly and indirectly, making use of means and instruments of transportation and communication in interstate commerce and of the mails to offer to sell and to sell securities of Defendant FRIGITEMP, and or carrying or causing such securities to be carried through the mails and in interstate commerce by means and instruments of transportation for the purpose of sale and delivery after sale as more particularly described in paragraphs 12 through 38 above.

42. With respect to the offers to sell, sales and delivery after sales of Defendant FRIGITEMP'S securities as described in paragraphs 19, 20, 21, 22, 23, 27, 28 and 32 above, no registration statement was filed or in effect with Plaintiff COMMISSION.

43. By reason of the activities described in paragraphs 19, 20, 21, 22, 23, 32 and 42 above, Defendants FRIGITEMP, LEE, ROSS, SILVER and HEILBRUN, singly and in concert, directly and indirectly, violated Section 5 of the Securities Act.

WHEREFORE, the Plaintiff COMMISSION respectfully prays

that this Court order:

Section 5 of the Securities Act

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A final judgment of permanent injunction restraining and enjoining Defendants FRIGITEMP, LEE, SILVER, ROSS and HEILBRUN and their officers, directors, partners, agents, servants, employees, attorneys, successors, assigns, subsidiaries, affiliates, nominees and all persons acting in concert or participation with them from directly or indirectly (in the absence of an applicable exemption):

A. Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise, securities of Defendant FRIGITEMP or any other issuer unless and until a registration statement has been filed with Plaintiff COMMISSION as to such securities;

B. Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or to sell securities of Defendant FRIGITEMP or any other issuer through the use or medium of any prospectus, or otherwise, unless and until a registration statement is in effect with Plaintiff COMMISSION as to such securities;

C. Carrying such securities or causing them to be carried through the mails or in interstate commerce by any means or instruments of transportation for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with Plaintiff COMMISSION as to such securities.

A final judgment of permanent injunction restraining and enjoining the Defendants FRIGITEMP, LEE, HEILBRUN, SILVER and ROSS, and thei agents, servants, employees, attorneys, successors, assigns, affiliates, nominees and all persons acting in concert or participation with them, in connection with the purchase or sale of the securities of Defendant FRIGITEMP or any other issuer

A. From directly or indirectly, by use of any means or instrumentalities of transportation or communication in interstate commerce or instrumentalities of interstate commerce, or of the mails:

1. Obtaining money or property by means of, or making, any untrue statement of material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, concerning:

a. The identity of any person, corporation, partnership or entity who or which is acting or has acted, directly or indirectly, as a finder or underwriter; or

b. The payment of finders' fees; or

c. The payment of underwriting compensation; or

d. The payment by or on behalf of Defendant FRIGITEMP of monies in the form of undisclosed cash payments to others to induce the awarding of contracts to Defendant FRIGITEMP for services to be performed or goods to be delivered; or

e. Arrangements involving purchase and sale agreements, guarantees against loss, take-out agreements and/or payments to brokers and/or dealers or other parties;

4. From employing any device, scheme or artifice to defraud and from engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser or seller of securities, including but not limited to:

a. The payment by or on behalf of Defendant FRIGITEMP of monies in the form of undisclosed cash payments to others to induce the awarding of contracts to Defendant FRIGITEMP for services to be performe or goods to be delivered;

b. Arrangements involving purchase and sale agreemen guarantees against loss, take-out agreements and/or payments to brokers a or dealers or other parties; or

c. From effecting, alone or with one or more other per sons, a series of transactions in any securities of Defendant FRIGITEMP or any other issuer by the use of the mails or any means or instruments of tra portation or communication of interstate commerce to create actual or apparent active trading in any securities of Defendant FRIGITEMP or any other issuer, or raising or depressing the price of any such securities, for the purpose of inducing the purchase or sale of any such security by others, or for the purpose of artificially fixing the price of any security.

III

An order authorizing representatives of the Plaintiff COMMISSION and all other state and federal law enforcement and regulatory agencies hav jurisdiction over matters relating to the conduct or business of Defendant FRIGITEMP to have continuing access to the corporate books and records o Defendant FRIGITEMP.

IV

An order directing and requiring Defendants LEE, SILVER, [illegible]OSS and HEILBRUN to pay Defendant FRIGITEMP within 120 days or such

of $185,000 which amount approximates the undisclosed cash payments by Defendant FRIGITEMP, in order to induce the awarding of contracts to Defendant FRIGITEMP, for services to be performed or goods to be delivered.

V

An order restraining and enjoining Defendants LEE, SILVER, ROSS and HEILBRUN from selling any of Defendant FRIGITEMP'S securiti owned directly or indirectly by them for a period of one year unless such sale or sales are pursuant to a merger, a sale of substantially all of the assets of Defendant FRIGITEMP or otherwise as is acceptable to Plaintiff COMMISSION.

VI

An order directing and requiring Defendants FRIGITEMP, LEE, SILVER, ROSS and HEILBRUN to implement a plan within sixty days, or such additional time as is acceptable to Plaintiff COMMISSION, to accomplish the establishment of a Board of Directors and Executive Committee consisting of a Chairman and a majority of independent public directors charged with the responsibilities of the general supervision in the management of the business and affairs of Defendant FRIGITEMP and to insure that the operations of the company will be so supervised by its independent members of the Executive Committee and Board of Directors and that the Board of Directors and Executive Committee will be counseled by qualified and independent attorneys, such plan to be operative for a period of two years, provided that upon the termination of the first year of such two year period such procedures may be terminated upon conditions satisfactory to Plaintiff COMMISSION.

and proper.

Respectfully submitted,

STANLEY SPORKIN,
Deputy Director

THEODORE A. LEVINE,
Branch Chief

RALPH C. FERRARA,
Attorney

Attorneys for Plaintiff SECURITIES AND EXCHANGE COMMISSION
500 North Capitol Street, N. W.
Washington, D. C. 20549
Tele.: (202) 755-1226

Dated: March 28, 1973
Washington, D. C.

On the 27 day of March 1973 before me personally appears

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

64a

FILED
MAR 28 1973
JAMES F. DAVEY, Clerk

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- FRIGITEMP CORP. GERALD LEE MERVYN SILVER GERALD ROSS, and JOSEPH HEILBRUN Defendants.	FINAL JUDGMENT OF PERMANENT INJUNCTIC C.A. 596-73

Plaintiff, SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"), having filed its Complaint herein on March 28, 1973 and Defendants FRIGITEMP CORP., GERALD LEE, MERVYN SILVER, GERALD ROSS, and JOSEPH HEILBRUN, in their attached Consents, having admitted the jurisdiction of this Court and having, solely for purposes of this action and for no other purpose, entered a general appearance, waived the making of findings of fact and conclusions of law, and, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without admitting or denying any of the allegations of the Complaint except as to jurisdiction, having consented on the terms specified in the Consents annexed hereto solely for the purposes of this action to the entry of a Final Judgment, as is set forth below, without this Final Judgment constituting any evidence or admission by Defendants FRIGITEMP CORP., GERALD LEE, MERVYN SILVER, GERALD ROSS, and JOSEPH HEILBRUN, with respect to any of the allegations, it is

ORDERED, ADJUDGED AND DECREED that Defendants

FRIGITEMP CORP., GERALD LEE, MERVYN SILVER, GERALD ROSS, and JOSEPH HEILBRUN and their officers, directors, partners, agents, servants, employees, attorneys, successors, assigns, subsidiaries, affiliates, nominees and all persons acting in concert or participation wit them are hereby permanently restrained and enjoined from directly or indirectly (in the absence of an applicable exemption):

A. Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise, securities of Defendant FRIGITEMP CORP. or any other issuer unless and until a registration statement has been filed with Plaintiff COMMISSION as to such securities;

B. Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or to sell securities of Defendant FRIGITEMP CORP. or any other issuer through the use or medium of any prospectus, or otherwise, unless and until a registration statement is in effect with Plaintiff COMMISSION as to such securities;

C. Carrying such securities or causing them to be carried through the mails or in interstate commerce by any means or instruments of transportation for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with Plaintiff COMMISSION as to such securities.

or liability for any purpose.

66a

ORDERED, ADJUDGED AND DECREED that Defendants FRIGITEMP CORP., GERALD LEE, MERVYN SILVER, GERALD ROSS, and JOSEPH HEILBRUN, and their agents, servants, employees, attorneys, successors, assigns, affiliates, nominees and all persons acting in concert or participation with them are hereby permanently restrained and enjoined in connection with the purchase or sale of the securities of Defendant FRIGITEMP CORP., or any other issuer:

A. From, directly or indirectly, by use of any means or instrumentalities of interstate commerce, or of the mails:

1. Obtaining money or property by means of, or making, any untrue statement of material fact or omitting to state a material fact necessar in order to make the statements made, in light of the circumstances under which they were made, not misleading, concerning:

a. The identity of any person, corporation, partnership or entity who or which is acting or has acted, directly or indirectly, as a finder or underwriter; or

b. The payment of finders' fees; or

c. The payment of underwriting compensation; or

d. The payment by or on behalf of Defendant FRIGITEMP CORP., of monies in the form of undisclosed cash payments to induce the awarding of contracts to Defendant FRIGITEMP CORP., for services to be performed or goods to be delivered; or

e. Arrangements involving purchase and sale agreements, guarantees against loss, take-out agreements and/or payments to brokers and/or dealers or other parties.

2. From employing any device, scheme or artifice to defraud and from engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser or seller of securities, including but not limited to:

a. The payment by or on behalf of Defendant FRIGITEMP CORP. of monies in the form of undisclosed cash payments to others to induce the awarding of contracts to Defendant FRIGITEMP CORP. for services to be performed or goods to be delivered;

b. Arrangements involving purchase and sale agreements, guarantees against loss, take-out agreements and/or payments to brokers and/or dealers or other parties; or

c. From effecting alone or with one or more other persons, a series of transactions in any securities of Defendant FRIGITEMP CORP., or any other issuer by the use of the mails or any means or instruments of transportation or communication of interstate commerce to create actual or apparent active trading in any securities of Defendant FRIGITEMP CORP. or any other issuer, or raising or depressing the price of any such securities, for the purpose of inducing the purchase or sale of any such security by others, or for the purpose of artificially fixing the price of any security.

ORDERED, ADJUDGED AND DECREED that the representatives of Plaintiff COMMISSION and all other state and federal law enforcement and regulatory agencies having jurisdiction over matters relating to the conduct or business of Defendants FRIGITEMP CORP. to have continuing access to the corporate books and records of Defendant FRIGITEMP CORP.

2. From employing any device, scheme or artifice to defraud and from engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser or seller of securities, including but not limited to:

a. The payment by or on behalf of Defendant FRIGITEMP CORP. of monies in the form of undisclosed cash payments to others to induce the awarding of contracts to Defendant FRIGITEMP CORP. for services to be performed or goods to be delivered;

b. Arrangements involving purchase and sale agreements, guarantees against loss, take-out agreements and/or payments to brokers and/or dealers or other parties; or

c. From effecting alone or with one or more other persons, a series of transactions in any securities of Defendant FRIGITEMP CORP., or any other issuer by the use of the mails or any means or instruments of transportation or communication of interstate commerce to create actual or apparent active trading in any securities of Defendant FRIGITEMP CORP. or any other issuer, or raising or depressing the price of any such securities, for the purpose of inducing the purchase or sale of any such security by others, or for the purpose of artificially fixing the price of any security.

ORDERED, ADJUDGED AND DECREED that the representatives of Plaintiff COMMISSION and all other state and federal law enforcement and regulatory agencies having jurisdiction over matters relating to the conduct or business of Defendants FRIGITEMP CORP. to have continuing access to the corporate books and records of Defendant FRIGITEMP CORP.

ORDERED, ADJUDGED AND DECREED that Defendants GERALD LEE, MERVYN SILVER, GERALD ROSS, and JOSEPH HEILBRUN collectively are hereby directed and required to pay, within 120 days or such additional period of time as is acceptable to Plaintiff COMMISSION, Defenda FRIGITEMP CORP. the sum of $185,000 which amount approximates undisclosed cash payments by Defendant FRIGITEMP CORP., in order to induce the awarding of contracts to Defendant FRIGITEMP CORP., for the service to be performed or goods to be performed or goods to be delivered.

ORDERED, ADJUDGED AND DECREED that Defandants GERALD LEE, MERVYN SILVER, GERALD ROSS and JOSEPH HEILBRUN are hereb restrained and enjoined from selling any of Defendant FRIGITEMP CORP.'S securities owned, directly or indirectly, by them for a period of one year unless such sale or sales are pursuant to a merger, sale of substantially all of the assets of Defendant FRIGITEMP CORP. or other plan acceptable to Plaintiff COMMISSION.

ORDERED, ADJUDGED AND DECREED that Defendants FRIGITEM CORP., GERALD LEE, MERVYN SILVER, GERALD ROSS, and JOSEPH HEILBRUN are hereby directed to implement the attached plan within 60 days, or such additional time as is acceptable to Plaintiff COMMISSION, to accomplish the establishment of a Board of Directors and Executive Committee consisting of a Chairman and a majority of independent public directors charged with the responsibilities of the general supervision in the management of the business and affairs of Defendant FRIGITEMP CORP. and to insure that the operations of the company will be so supervised by its independent members of the Executive Committee and Board of Directors and that the Board of Directors and Executive Committee will be counseled

by qualified and independent attorneys, such plan to be operative for a period of two years provided that upon the termination of the first year of such two year period, such procedures may be terminated upon conditions satisfactory to Plaintiff COMMISSION.

ORDERED that the annexed Consents of Defendants FRIGITEMP CORP., GERALD LEE, MERVYN SILVER, GERALD ROSS, and JOSEPH HEILBRUN are for the purpose of this action and this action only.

DATED: Washington, D. C.
March 27, 1973

JUDGMENT ENTERED

U.S.D.J.

George L. Hart, Jr.
Judge, U. S. District Court
for the District of Columbia

Attorneys for Defendants
FRIGITEMP CORP.
GERALD LEE
MERVYN SILVER
GERALD ROSS
JOSEPH HEILBRUN

Ralph C. Thomas
Attorney
U.S. Securities & Exchange Commission
500 N. Capitol St.
Washington D.C.

Hamel Fox Kimbrell & Williams
by D. Wm. Hamel

Abraham Lapidus Cooley Myerson & Fried
by [illegible]

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FILED
MAR 28 1973
JAMES F. DAVEY, Clerk

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

FRIGITEMP CORP.
GERALD LEE
MERVYN SILVER
GERALD ROSS
JOSEPH HEILBRUN,

Defendants.

Civil 74, 596-,

CONSENT OF DEFENDANT FRIGITEMP CORP. TO THE FINAL JUDGMENT OF PERMANENT INJUNCTION

Defendant, Frigitemp Corp. ("Defendant"), consents to the entry of the Judgment of Permanent Injunction annexed hereto as follows:

1. Defendant admits the jurisdiction of this Court over it and over the subject matter of this action, and admits the service of the summons and complaint upon it.

2. Defendant, without admitting or denying any of the allegations in the complaint, except as to jurisdiction, hereby consents to the entry of the annexed Judgment of Permanent Injunction.

Defendant consents to the annexed Judgment of Permanent Injunction for the purpose of this action only and such consent is entered into without trial or argument of any issue of fact or law and does not constitute any evidence or admission by Defendant or by its officers, directors, agents, servants, employees, attorneys, successors, assigns,

RESOLUTION

RESOLVED, that the President of Frigitemp Corp. (the "Corporation") be, and he hereby is, authorized on behalf of the Corporation, to take such action as may be recommended or approved by counsel, selected by him, to enter into a Consent to Entry of Judgment of Permanent Injunction, as may be approved or recommended by counsel or to take such other and further actions in the premises as may be recommended or approved by counsel, and to execute any and all documents as may be required and as counsel may approve, and to do all things deemed appropriate in connection therewith, on behalf of the Corporation in connection with the private investigation by the Securities and Exchange Commission in the matter of Frigitemp Corp.

subsidiaries and affiliates or any person in active concert or participation with them with respect to any such issue or of any wrongdoing or liability for any purpose.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant enters into this consent voluntarily and no promise or threat of any kind whatsoever has been made by Plaintiff Securities and Exchange Commission or any member, officer, agent or representative thereof to induce Defendant to enter into this consent.

6. Defendant agrees that the annexed Judgment of Permanent Injunction may be presented by Plaintiff to the Court for signature and entry without further notice.

7. This Consent shall be incorporated by reference in the annexed Judgment of Permanent Injunction to be entered by the Court in this action.

FRIGITEMP CORPORATION

By _____
Gerald Lee (President)

Dated: New York, New York
March 27, 1973.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On this 27 day of March, 1973, before me personally came Gerald Lee, to me known and known to me to be the individual who executed the foregoing Consent for, on behalf and in the name of Frigitemp Corp., and he being by me duly sworn did depose and say that he is President of Frigitemp Corp. and that he has been duly and properly authorized and empowered to make, execute and deliver the foregoing Consent for, on behalf and in the name of said Frigitemp Corp.

Ernst Gruber
Notary Public

[Notarial Seal]

ERNST GRUBER
NOTARY PUBLIC, State of New York
No. 31-5971300
Qualified in Queens County
Term Expires March 30, 1974

No dealer, salesman or any other person has been authorized to give any information or to

CERTIFICATE

I, JOSEPH HEILBRUN, Assistant Secretary of FRIGITEMP CORP., hereby certify that the attached is a true and complete copy of a resolution adopted by the unanimous consent of the Board of Directors of said company on March 26, 1973, and that said resolution has not been rescinded or modified and is in full force and effect.

Joseph Heilbrun, Assistant Secretary
FRIGITEMP CORP.

March 27, 1973

FILED
MAR 28 1973
JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

FRIGITEMP CORP.
GERALD LEE
MERVYN SILVER
GERALD ROSS
JOSEPH HEILBRUN,

Defendants.

Civil No. 596

CONSENT OF DEFENDAN GERALD LEE, GERALD ROSS and JOSEPH HEILBRUN TO THE FINAI JUDGMENT OF PERMANE INJUNCTION

Defendants, Gerald Lee, Gerald Ross and Joseph Heilbrun ("Defendants"), consent to the entry of the Judgment of Permanent Injunction annexed hereto as follows:

1. Defendants admit the jurisdiction of this Court over them and over the subject matter of this action, and admit the service of the summons and complaint upon them.

2. Defendants, without admitting or denying any of the allegations in the complaint, except as to jurisdiction, hereby consent to the entry of the annexed Judgment of Permanent Injunction.

3. Defendants consent to the annexed Judgment of Permanent Injunction for the purpose of this action only and such consent is entered into without trial or argument of any issue of fact or law and does not constitute any evidence or admission by Defendants or by their agents, servants, employees, attorneys and nominees or any person in active

securities offered hereby will be sold, and if less than all of the

concert or participation with them with respect to any such issue or of any wrongdoing or liability for any purpose. 77a

4. Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendants enter into this Consent voluntarily and no promise or threat of any kind whatsoever has been made by Plaintiff, Securities and Exchange Commission, or any member, officer, agent or representative thereof to induce Defendants to enter into this Consent.

6. Defendants agree that the annexed Judgment of Permanent Injunction may be presented by Plaintiff to the Court for signature and entry without further notice.

7. This Consent shall be incorporated by reference in the annexed Judgment of Permanent Injunction to be entered by the Court in this action.

Gerald Lee

Gerald Ross

Joseph Heilbrun

Dated: March 27, 1973.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the 27 day of March, 1973, before me personally appeared GERALD LEE, mentioned and described in the foregoing Consent and the said GERALD LEE duly acknowledged to me that he executed the said Cons

Ernst Gruber
Notary Public

[Notarial Seal]

ERNST GRUBER
NOTARY PUBLIC, State of New York
No. 41 6042700
Qualified in Queens County
Term Expires March 30, 1974

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the 27 day of March, 1973, before me personally appeared GERALD ROSS, mentioned and described in the foregoing Consent and the said GERALD ROSS duly acknowledged to me that he executed the said Consent.

Ernst Gruber
Notary Public

[Notarial Seal]

ERNST GRUBER
NOTARY PUBLIC, State of New York
No. 41 6042700
Qualified in Queens County
Term Expires March 30, 1974

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the 27 day of March, 1973, before me personally appeared JOSEPH HEILBRUN, mentioned and described in the foregoing Consent and the said JOSEPH HEILBRUN duly acknowledged to me that he executed the said Consent.

Ernst Gruber
Notary Public

[Notarial Seal]

[illegible]

The products sold by the Company fall into four major categories:

FILED
MAR 28 1973
JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

FRIGITEMP CORP.
GERALD LEE
MERVYN SILVER
GERALD ROSS
JOSEPH HEILBRUN,

Defendants.

Civil No. 545-7

CONSENT OF DEFENDANT MERVYN SILVER TO THE FINAL JUDGMENT OF PERMANENT INJUNCTION

Defendant, Mervyn Silver ("Defendant"), consents to the entry of the Judgment of Permanent Injunction annexed hereto as follows:

1. Defendant admits the jurisdiction of this Court over him and over the subject matter of this action, and admits the service of the summons and complaint upon him.

2. Defendant, without admitting or denying any of the allegations in the complaint, except as to jurisdiction, hereby consents to the entry of the annexed Judgment of Permanent Injunction.

3. Defendant consents to the annexed Judgment of Permanent Injunction for the purpose of this action only and such consent is entered into without trial or argument of any issue of fact or law and does not constitute any evidence or admission by Defendant or by his agents, servants employees, attorneys and nominees or any person in active concert or

participation with him with respect to any such issue or of any wrongdoing or liability for any purpose.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant enters into this Consent voluntarily and no promise or threat of any kind whatsoever has been made by Plaintiff, Securities and Exchange Commission, or any member, officer, agent or representative thereof to induce Defendant to enter into this Consent.

6. Defendant agrees that the annexed Judgment of Permanent Injunction may be presented by Plaintiff to the Court for signature and entry without further notice.

7. This Consent shall be incorporated by reference in the annexed Judgment of Permanent Injunction to be entered by the Court in this action.

Meryyn Silver

Dated: March 27, 1973.

STATE OF MISSISSIPPI)
: ss.:
COUNTY OF Jackson)

On the 27th day of March, 1973, before me personally appeared MERVYN SILVER, mentioned and described in the foregoing Consent and the said MERVYN SILVER duly acknowledged to me that he executed the said Consent.

Patricia B. Osborne
Notary Public

[Notarial Seal]

My Commission Expires Oct. 31, 1976

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FILED
MAR 23 1973
JAMES F. DAVEY, Clerk

SECURITIES AND EXCHANGE COMMISSION,	Civil 73-51
Plaintiff,	PLAN PURSUANT TO CONSENT OF DEFENDANTS FRIGITEMP CORP., GERALD LEE, MERVYN SILVER, GERALD ROSS, JOSEPH HEILBRUN, TO THE FINAL JUDGMENT OF PERMANENT INJUNCTION
-against-	
FRIGITEMP CORP., GERALD LEE, MERVYN SILVER, GERALD ROSS, JOSEPH HEILBRUN,	
Defendants.	

Defendants Frigitemp Corp., Gerald Lee, Mervyn Silver, Gerald Ross and Joseph Heilbrun hereby offer the following Plan pursuant to their Consents filed with the Final Judgment of Permanent Injunction, which Plan has been approved by the Board of Directors of defendant Frigitemp Corp. pursuant to the certified resolution attached hereto.

I

Under said Plan, defendant Frigitemp Corp. will establish a committee of two or more individuals who will utilize their best efforts, consistent with the laws of the state of incorporation of defendant Frigitemp Corp. and its Articles of Incorporation and Bylaws, to accomplish the following within sixty (60) days of the entry of the Final Judgment of Permanent Injunction, or such later period as plaintiff Securities and Exchange Commission may allow.

Said committee will locate four or five individuals to be elected to the Board of Directors of defendant Frigitemp Corp. so that such Board of Directors of defendant Frigitemp Corp. shall be made up of six or

as a Director of the Company. The Underwriter's Initial [illegible] Director, elected

eight persons, as the case may be, and the number of independent directors thereon shall exceed management directors by at least two in number. Upon receiving the agreement of such four or five individuals, as the case may be, to serve on the Board of Directors any one or two, as the case may be, of the current members of the Board of Directors will resign and the remaining incumbent directors will elect the independent directors to the Board of Directors. As soon thereafter as practicable, defendant Frigitemp Corp. will hold a meeting of stockholders at which the Board of Directors, as then constituted, will be presented for election by stockholders to serve until the next annual meeting of stockholders or the successors are elected and qualify. The Board of Directors shall be responsible for the general supervision in the management of the business and affairs of defendant Frigitemp Corp. The Board of Directors shall meet at least once every three months.

II

Immediately after their appointment or election, whichever occurs earlier, the newly constituted Board of Directors shall take the following steps consistent with the laws of the state of incorporation of defendant Frigitemp Corp., its Articles of Incorporation and Bylaws:

A. It shall choose from among the independent directors one individual to serve as Chairman of the Board of Directors.

B. It shall appoint an Executive Committee, the membership of which shall be such that a majority of the Executive Committee shall be the independent directors and the Chairman of which shall be one of the independent directors. The Executive Committee shall have such powers as shall be designated by the Board of Directors consistent with the laws of the state in which defendant Frigitemp Corp. is incorporated.

C. It shall appoint special counsel to the Board of Directors to serve as its counsel and as Secretary to the Executive Committee.

III

Defendant Lee shall, within seven (7) days of the entry of the order of the Final Judgment of Permanent Injunction, grant to Lloyd D. Feld, Esquire and Samuel Efron, Esquire, or either of them, an irrevocable proxy for a period of two years from the date of the entry of the Final Judgment of Permanent Injunction to vote all shares of common stock of defendant Frigitemp Corp. owned by him, directly or indirectly, in connection with the election or removal of any or all members of the Board of Directors of defendant Frigitemp Corp.

IV

Defendant Frigitemp Corp. shall immediately notify plaintiff Commission upon the removal or resignation of its independent certified public accountants, which notification shall set forth the reasons for such removal or resignation.

V

All provisions of the foregoing Plan shall be operative for a period of two years, provided that upon the termination of the first year of such two year period the procedures under the Plan, including the irrevocable proxy granted by defendant Gerald Lee under Section III above, may be terminated upon conditions satisfactory to plaintiff Commission.

FRIGITEMP CORP.

By _____
Gerald Lee, President

_____
Gerald Lee

_____
Joseph Hellbrun

Gerald Ross and Mervyn Silver,
by their attorneys

BLACKMAN LEFRAK GALGAY
MYERSON & FELD

By _____
Lloyd D. Feld

ARENT, FOX, KINTNER, PLOTKEN
& KAHN

By _____
Samuel Byron

CERTIFICATE

I, JOSEPH HEILBRUN, Assistant Secretary of FRIGITEMP CORP., hereby certify that the attached is a true and complete copy of a resolution adopted by the unanimous consent of the Board of Directors of said company on March 26, 1973, and that said resolution has not been scinded or modified and is in full force and effect.

Joseph Heilbrun, Assistant Secretary
FRIGITEMP CORP.

March 27, 1973

Exhibit C in Support of Fund Defendants Motion to Dismiss

Prospectus of Frigitemp Corp. dated July 15, 1969

PROSPECTUS

5,000 Units

Frigitemp Corp.

87a

80,000 Shares of Common Stock ($.10 par value)
$250,000 5% Convertible Subordinated Debentures Due February 1, 1979
50,000 Common Stock Purchase Warrants
(To be offered in Units consisting of 16 shares of Common Stock, a $50.00 Debenture and 10 Warrants)

The Debentures will be convertible at any time prior to maturity, unless previously redeemed, into Common Stock of the Company at $5.00 per share, subject to adjustment in certain cases. There is no provision for sinking fund payments to retire the Debentures prior to maturity. The Company, at its option, may redeem all or a part of Debentures at any time beginning February 1, 1971, at prices declining from 105% to par. (See "Description of the Debentures").

Each Warrant entitles the holder thereof to purchase one share of Common Stock at a price of $10.00 at any time on or prior to January 31, 1974. The Warrants are transferable separately immediately upon issuance. (See "Description of the Warrants").

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Prior to this offering there has been no established public market for the Common Stock, Debentures, Warrants or Units of the Company. The offering price of the Units was determined by negotiation between the Company and the Underwriter.

	Price to Public(1)	Underwriting Discounts and Commissions(2)	Proceeds to Company(2)(3)
Per Unit (16 Shrs. of Common Stock)... ($50.00 Debenture) ..... (10 Warrants)	$150.00	$15.00	$135.00
Total	$750,000	$75,000	$675,000

(1) Of the offering price, the Company has assigned $100.00 to represent the proceeds of the 16 shares, at a rate of $6.25 per share, $48.75 to represent the proceeds of the Debenture, and $1.25 to represent proceeds from the sale of the Warrants at the rate of $.125 per Warrant. The amounts assigned have no relation to market prices nor should they be deemed an indication that any market will develop for any of the securities.

(2) These Units are offered on a "best efforts" basis and there is no assurance that all or any of the Units offered will be sold. In the event that all of the Units offered hereby are not sold the proceeds to the Company and the Underwriter's commissions will be reduced proportionately. The Company has agreed to issue to the Underwriter and to one of its registered representatives, Mr. Raymond Weiss, five year warrants to purchase shares of the Company's Common Stock at a price of $1.00 per share, at the rate of 800 warrants for each 500 units sold. Such warrants will not be transferable or exercisable for a period of one year after the date of this Prospectus. Mr. Raymond Weiss and any transferees of Mr. Weiss or the Underwriter with respect to such warrants or the underlying shares may be deemed to be "Underwriters" under the Securities Act of 1933. Any profit realized by the Underwriter, Mr. Raymond Weiss, or any person affiliated with them from the sale of the warrants or the underlying shares of Common Stock may be deemed additional underwriting compensation. (See "Underwriting"). See "Management" for a description of the Underwriter's right to designate one director of the Company subject to the sale of 1,500 Units.

(3) Before deducting expenses estimated at $32,000.

At the request of the Company, the Underwriter has reserved up to 750 Units for offering at the public offering price to employees, customers and suppliers of the Company and to friends of the Company's management. The number of Units available for offering to the general public will be reduced to the extent that such persons purchase such Units.

On August 5, 1968, the Company sold for investment an aggregate of 129,500 shares of its Common Stock to five individuals at a price of $.30 per share.

Alessandrini & Co., Inc.

The date of this Prospectus is January 15, 1969.

No dealer, salesman or any other person has been authorized to give any information or to make any representations other than those contained in this Prospectus, and, if given or made, such information and representations must not be relied upon as having been authorized by the Company or by the Underwriter. This Prospectus does not constitute an offer to sell or solicitation of an offer to buy any of the securities offered hereby in any state to any person to whom it is unlawful to make such offer in such state. Neither the delivery of this Prospectus nor any sale hereunder shall under any circumstances create any implication that there has been no change in the affairs of the Company since the date hereof.

Until April 15, 1969 (90 days after the date appearing on the front cover of this Prospectus), all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a Prospectus. This is in addition to the obligation of a dealer to deliver a Prospectus when acting as an underwriter and with respect to its unsold allotments or subscriptions.

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE COMMON STOCK, THE DEBENTURES, THE WARRANTS AND/OR THE UNITS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THE COMPANY

FRIGITEMP CORP. (herein called the "Company") was incorporated under the laws of the State of New York on April 18, 1945. It is engaged in the business of selling refrigerators, food service equipment and temperature controlled equipment. The term "Company" as used in this Prospectus includes its wholly owned subsidiaries, except where the context otherwise indicates. The Company's principal executive offices are located at 329 Herzl Street, Brooklyn, New York.

Mr. Gerald Lee and members of his family own approximately 59% of the Company's outstanding Common Stock, and assuming the sale of all the Units offered hereby, they will own approximately 54% of the outstanding stock. By virtue of their stockholdings and management positions, the Lee family will be in a position to control the policies of the Company.

This is a best efforts offering. There is no assurance that upon completion of the offering there will be a market for any of the securities offered hereby. The limited size of this offering will result in a limited number and amount of publicly held securities. Accordingly, there is a good possibility that a market, if any, that may develop will be small.

Dividends

The Company has paid no dividends on its Common Stock and anticipated capital requirements of the Company makes it unlikely that any dividends will be declared in the future.

Dilution

On August 5, 1968, the Company sold for investment an aggregate of 129,500 shares of its Common Stock to five individuals at a price of $.30 per share.

The book value of the Company's Common Stock as at September 30, 1968 was $.38 per share. Assuming the sale of 5,000 Units offered hereby and the allocation of $5.25 as the per share cost of the Common Stock, the book value of the outstanding common stock will be $.82 per share (before deducting the expenses of this offering which are estimated at $32,000), resulting in a reduction of $5.43 per share for the shares purchased by the public. This increase in book value will be attributable to, and the immediate dilution from the public offering price will be absorbed by, the cash payments made by the purchasers of the securities offered hereby. Assuming the exercise of all Warrants and conversion of all Debentures, the book value will be further increased to $1.47 per share, based on September 30, 1968 figures.

USE OF PROCEEDS

Assuming the sale of all the Units offered hereby, the net proceeds to the Company from this offering, after deduction of all expenses, will be approximately $643,000. Such proceeds shall be used for the following purposes and in the following amounts:

1. Research and development, particularly in the Company's line of hospital and environmental controlled units and equipment.....	$100,000
2. Carrying additional inventory and accounts receivable, primarily in the Company's lines of hospital and environmental controlled units and equipment and products for shipboard use.....	445,000
3. Sales and promotion.....	98,000
Total	$643,000

Since this is a "best efforts" underwriting, there can be no assurance that all or any of the securities offered hereby will be sold, and if less than all the Units offered hereby are sold then the net proceeds to the Company from this offering will be reduced and the amounts allocated to the foregoing purposes will be reduced proportionately, except that such allocation will be subject to management's intent that not less than $100,000 (or the entire net proceeds if they amount to less than $100,000) will be used for carrying additional inventory and accounts receivable.

Any proceeds which may be received upon the exercise of the Warrants included in the Units, of which the maximum amount will be $500,000 if all are exercised, and any proceeds that may be received upon the exercise of the Underwriter's warrants, of which the maximum amount will be $8,000 if all are exercised, will be added to the general funds of the Company.

CAPITALIZATION

The capitalization of the Company as of November 30, 1968 and as adjusted to give effect to the sale of all the securities offered hereby, is as follows:

	Amount Authorized	Outstanding	To be Outstanding if all Securities offered are sold
Short term notes payable (1)	$ 108,519	$108,519	$108,519
5% Subordinated Convertible Debentures due February, 1979 (2)	$ 250,000	None	$250,000
Common Stock, par value $.10 per share (2)	2,000,000	829,500	909,500(2)
Common Stock purchase warrants included in the Units (2)	50,000	None	50,000
Warrants to Underwriter (2)	8,000	None	8,000

(1) Includes $60,660 of notes payable to Manufacturers Hanover Trust Company, which bear interest at 7¾% per annum. The balance of $47,858 is non-interest bearing and is payable to two suppliers and one sales representative.

(2) Does not include 108,000 shares reserved for issuance as follows: (a) upon exercise of the 50,000 warrants, (b) upon conversion of the Debentures into 50,000 shares and (c) upon exercise of the Underwriter's 8,000 warrants. To the extent that all of the Units offered hereby are not sold, the number of shares, Debentures and Warrants outstanding will be reduced at the rate of 16 shares, $50 principal amount Debenture and 10 Warrants for each Unit not sold, and 800 warrants to the Underwriter for each 500 Units not sold. There can be no assurance that any of the securities offered will be sold.

Information concerning the Company's obligations under leases is contained under the subheading "Plant and Facilities", and in Note 7 of Notes to Financial Statements.

FRIGITEMP CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF INCOME

The following Consolidated Statement of Income for the five years and six months ended June 30, 1968 has been ined by Louis Sternbach & Company, independent certified public accountants, and should be read in conjunction with nancial statements and accompanying notes thereto included elsewhere in this Prospectus. The acquisition of the balance of f the outstanding stock of Cryotemp Products, Inc. and Frigitemp Laboratory and Hospital Equipment Corp., have been ed as poolings of interests for accounting purposes and, accordingly the Consolidated Statement of Income includes the ations of Cryotemp and Frigitemp Laboratory for all periods since these subsidiaries commenced business operations. Cryo- Products, Inc. is included from February 1, 1966 and Frigitemp Laboratory and Hospital Equipment Corp. is included October 1, 1967.

The statement for the six months ended June 30, 1967 and the nine months ended September 30, 1967 and September 30, is unaudited but includes all adjustments (consisting only of normal recurring accruals) which in the opinion of the com- are necessary for a fair presentation of the results of operations for such period.

	Calendar Years					Six Months Ended June 30,		Nine Months Ended September 30,	
	1963	1964	1965	1966	1967	1967	1968	1967	1968
						(Unaudited)		(Unaudited)	
.....	$ 613,727	$1,052,319	$1,301,940	$1,594,977	$2,333,543	$1,133,470	$1,219,541	$1,713,829	$1,818,626
of Sales (B).....	509,091	864,626	1,051,483	1,271,553	1,891,998	917,662	892,731	1,331,691	1,316,831
Profit	104,636	187,693	250,452	323,424	413,545	215,808	326,810	382,718	499,795
. general and administrative nses	92,621	154,403	213,752	280,946	388,965	178,789	247,726	282,202	396,118
ing Income	12,015	33,290	36,700	42,478	54,580	37,019	79,084	50,516	103,677
Deductions:									
Interest	1,016	206	2,382	4,045	7,377	3,089	5,339	5,086	12,226
Bad debts	7,549	9,722	16,661	23,364	19,756	10,000	15,565	15,069	12,905
come before provision for taxes	3,450	23,362	17,657	15,069	27,447	23,930	58,180	30,439	78,546
Federal income taxes (C)..	1,035	5,140	3,885	3,123	6,068	5,264	18,070	6,695	28,248
come	$ 2,415	$ 18,222	$ 13,772	$ 11,946	$ 21,379	$ 18,666	$ 40,110	$ 23,735	$ 50,298
come per share (A).....	$.01	$.03	$.02	$.02	$.03	$.02	$.06	$.03	$.06

S:

Based on weighted average of shares at the end of each period after giving retroactive effect to the recapitalization and the shares issued in the poolings of interest transactions.

The increase in the gross profit percentage for the nine months ended September 30, 1968 as compared to previous periods was due to the increased sales of hospital, laboratory, and environmental equipment, which represented 23% of current years volume as compared to 4% last year.

Income tax returns are filed separately for the Company and its Subsidiaries. The 10% federal income tax surcharge applicable to the nine months ended September 30, 1968 reduced per share earnings by less than $.01 per share.

Annual interest requirements on the Debentures offered hereby will initially amount to $12,500 and the amortization of Bond Discount on said Debentures will initially amount to $625 per annum.

The Company has never paid or declared any dividends.

he decrease in the net income percentage for the calendar year 1967 as compared to the nine months ended September 30, was due principally to expenditures for a new program of engineering services and participation in trade shows com- l in the latter half of 1967.

ne decrease in the net income percentage for the nine months ended September 30, 1968 as compared with the six months June 30, 1968 was due primarily to the Company's increased participation in trade shows which increase amounted to 7 of expenditures in the quarter ended September 30, 1968 in excess of that for the six months ended June 30, 1968.

BUSINESS

The products sold by the Company fall into four major categories:

(a) Commercial refrigeration equipment;

(b) A line of food service equipment;

(c) A line of marine galley equipment, and

(d) A line of hospital and environmental controlled equipment.

The Company began selling its line of commercial refrigeration equipment in 1945. The items include walk-in refrigerators, refrigerated display boxes, reach-in refrigerators and freezers. The commercial refrigeration equipment sold by the Company is used primarily in retail and wholesale food centers.

The Company's line of food service equipment was introduced in 1950. It includes display and other counters, work tables, steam tables, utility stands, equipment stands and coffee urn stands. They are sold primarily for use in restaurants, hotels, institutional kitchens and to other miscellaneous users.

The marine galley equipment sold by the Company consists of most of the commercial refrigeration and food service equipment sold by it adapted for shipboard installation, and in addition, water coolers, machinery for making ice cream at the dispensing point, x-ray tanks and ice making machines. The Company has been selling marine galley equipment for shipboard use since 1960.

The Company's line of hospital and environmental controlled equipment consists primarily of entire environmental controlled rooms and chambers; hospital refrigerators used for blood storage, pharmaceutical storage and milk formula storage; temperature baths; ultra low temperature freezers and x-ray development tanks. This line was introduced in 1965.

The following table sets forth the percentages of total sales in 1967 and during the first nine months of 1968 derived from the Company's product lines:

	1967	Nine Months Ended September 30, 1968
Total sales	$2,338,543	$1,818,626
Marine galley equipment and refrigerated equipment for shipboard use (including government contracts where the Company is a prime contractor)	50%	45%
Commercial refrigeration and food service equipment	46%	32%
Hospital and environmental controlled equipment and units	4%	23%

The decline in the sales of marine galley equipment and refrigerated equipment for shipboard use and of commercial refrigeration and food service equipment during the nine months ended September 30, 1968 from the rate of sales of such items in 1967 is due to the fact that in 1968 the Company concentrated its efforts and activities in the hospital and environmental controlled units as well.

Rudman & Scofield, Inc., of New York City, an independent contractor of galley equipment, accounted for approximately 24% of total Company sales in 1967 and the first nine months of 1968, all of which were made pursuant to purchase orders.

The following table sets forth the Company's order backlog as of September 30, 1968 and as of September 30, 1967. The 1967 figures are approximations since the Company does not keep records of such figures for past periods:

	September 30, 1968		September 30, 1967	
Marine galley equipment and refrigerated equipment for shipboard use.....	$ 552,642	(42%)	$280,000	(40%)
Hospital and environmental controlled equipment and units.....	302,927	(23%)	—	(—%)*
Prime government contracts for refrigerated equipment	124,440	(10%)	140,000	(20%)
Commercial refrigeration and food service equipment	329,704	(25%)	280,000	(40%)
Total	$1,309,713	(100%)	$700,000	(100%)

* Since at September 30, 1967 the Company had only recently become active in the sale of hospital and environmental controlled equipment and units, it had no order backlog for such item at that time.

Rudman & Scofield, Inc. supplied approximately 65% of the marine galley order backlog as of September 30, 1968, but its purchase orders are spread over numerous different contracts on different projects. Approximately 22% of the hospital and environmental order backlog as of September 30, 1968, consists of a single contract from Presbyterian Hospital in New York City. Approximately 45% of the commercial order backlog as of September 30, 1968, consists of a single contract from Carl Hoppl's, a Long Island, New York, restaurant chain. The Company's management estimates that deliveries on order backlog as of September 30, 1968, will be completed by the end of 1969.

It is estimated that approximately 50% of total Company sales in 1967 and the first nine months of 1968 consisted of work done for the United States government or its agencies either as prime contractor or as sub-contractor. Approximately half of such government work was done by the Company as prime contractor and the remainder as sub-contractor. The Company's management believes that approximately 60% of marine galley equipment for shipboard use sold by the Company in 1967 and for the first nine months of 1968 was sold for use in government ships. The government is also the ultimate user of a significant portion of the Company's commercial refrigeration products and of its hospital and environmental controlled equipment. Future curtailment of government expenditures or other changes in government spending patterns could adversely affect the Company's operations.

The government work done by the Company as of November 30, 1968 has not been subject to the Renegotiation Act of 1951.

The Company designs and engineers approximately 95% of the products it sells, some of which are pursuant to customers' specifications, but the Company does not manufacture all of those products. Most of the Company's manufacturing is sub-contracted to other persons.

Approximately 50% of all sub-contract work done for the Company is done by R & H Metal Products Corp., which does work exclusively for the Company. See "Transactions With Management and Others."

Sales

Only 25% of the Company's gross sales in 1967 and the first nine months of 1968 were to ultimate users and the balance of 75% were to sub-contractors and distributors who then resold them to ultimate users.

The Company's sales are primarily effected through the solicitation of the Company's officers and are promoted through catalogs, brochures and advertisements in trade journals (see "Use of Proceeds" for proposed expansion of sales and promotion activities).

With respect to hospital and environmental controlled equipment and units, in March, 1967, the Company's wholly owned subsidiary, Frigitemp Laboratory and Hospital Equipment Corp., entered into an agreement with Labequipco, Inc., of Williston Park, New York, wherein Labequipco was made exclusive agent throughout the United States for the sale of such subsidiary's laboratory and hospital equipment products for a period of five years ending May 31, 1972. The Frigitemp subsidiary may, at its option, cancel such agreement if Labequipco does not bring in a minimum volume of sales orders under the agreement of $750,000 in any one year under the contract. To date sales have not reached the annual minimum but the Company does not presently intend to terminate the contract. The contract provides that no commission is to be paid to Labequipco on sales to the government (unless such sale is made directly by Labequipco) unless the volume of sales produced by Labequipco reaches $500,000. None of the officers, directors or principal shareholders of the Company have any interest in Labequipco, Inc.

Plant and Facilities

The Company's executive offices and some of its manufacturing facilities are located at 329-61 Herzl Street, Brooklyn, New York, where it leases approximately 15,000 square feet of space in a one story building. The leases provide for an annual rent of $8,400 plus the Company's proportionate share of increased real estate taxes over those in effect in 1968, and expires on May 31, 1970. The Company has an option to renew such lease for an additional 5 year period at an increase of $420 per annum in the rental. See "Transactions With Management and Others" for the relationship among the Company, the landlord and the holder of the second mortgage on such building.

The Company also leases additional manufacturing and warehouse facilities across the street from its executive offices at 366-376 Herzl Street. Such warehouse space consists of approximately 10,000 square feet in a one story building. The lease provides for an annual rent of $6,600 and expires on July 31, 1969. The Company has the option to renew such lease for a further period of three years ending July 31, 1972 at a rental of $7,200 per annum. The landlord of such buliding is not affiliated with the Company, its management or present stockholders.

The Company's machinery consists of metal fabrication equipment and testing devices for the temperature and environmental controlled units and equipment sold by the Company. The Company considers its present equipment well maintained and adequate for its present business and for any anticipated business expansion.

Personnel

The Company presently employs approximately 30 persons, of whom 3 (all officers) are engaged in executive and sales positions, 8 in engineering and drafting capacities (of whom 3 are graduate engineers), 3 in clerical positions and the balance in production and shipping. The production and shipping personnel are subject to a contract with Local 719 of the International Production, Service and Sales Employees Union which expires February, 1970. The Company has not experienced any work stoppages due to labor disputes and believes its relationship with its employees to be satisfactory.

Competition

Since no single company offers all the different products sold by the Company, and competitive conditions vary with each of the Company's product lines, it is difficult to determine the Company's relative position with respect to its numerous products when the Company's operations are viewed as an entirety. With respect to the individual products sold by the Company, it competes with several other companies which have greater financial and other resources than the Company.

MANAGEMENT

The officers and directors of the Company are the following:

Name	Positions
Gerald Lee	President and Director
Gerald Ross	Vice-President, Treasurer and Director
Mervyn Silver	Vice-President, Secretary and Director
Samuel Lee	Chairman of the Board of Directors

Mr. Gerald Lee has been associated with the Company since 1947 and has been President since 1955.

Mr. Ross has been associated with the Company since 1964. For two years prior to such employment, he was General Manager of Jerry Elsner Company, a toy manufacturer.

Mr. Silver has been associated with the Company since 1963. For eleven years prior to such employment, he served as Vice-President of Silver Refrigeration Corp., which was then engaged in the business of manufacturing and selling commercial refrigeration equipment. In 1963, at about the time when his employment by the Company commenced, Mr. Silver was adjudged a bankrupt in voluntary proceedings initiated by him under the federal bankruptcy laws. Such personal bankruptcy by Mr. Silver resulted from his personal guarantees in connection with the business operations of Silver Refrigeration Corp. when it encountered financial difficulties. The latter corporation was also adjudicated a bankrupt in 1963 under the federal bankruptcy laws.

Mr. Samuel Lee is the founder of the Company. He is the father of Mr. Gerald Lee. For more than the past five years, Mr. Samuel Lee has served as consultant to the Company and as director of advertising.

Subject to the sale of 1,500 Units the Company and its principal shareholders have agreed to use their best efforts to have a designee of Alessandrini & Co., Inc., the Underwriter, elected as a Director of the Company. The Underwriter's initial designee will be Paul Alessandrini, the President and sole stockholder of the Underwriter.

Remuneration

The following table sets forth the aggregate direct remuneration paid by the Company during the fiscal year ended December 31, 1968 to the one officer and director of the Company whose aggregate direct remuneration exceeded $30,000 and to all officers and directors as a group, and the estimated retirement benefits to such persons at age 65:

	Aggregate Remuneration	Estimated Annual Retirement Benefit at Age 65**
Gerald Lee, President.....	$ 40,000	$ 6,720
Four officers and directors as a group*....	108,000	15,360

* Includes $13,000 per annum paid to Mr. Samuel Lee as a consultant pursuant to an employment agreement between the Company and Mr. Samuel Lee which expires in 1988. Mr. Samuel Lee does not participate in the Company's employee pension plan.

** Assuming continued employment at present salary levels.

Pension Plan

Employees covered by collective bargaining agreements are not eligible to participate under the Company's pension plan. As of November 30, 1968, only Messrs. Gerald Lee, Gerald Ross and Mervyn Silver, all officers and directors of the Company were eligible, although one non-management employee becomes eligible on the next anniversary date of the plan (March 15, 1969).

All contributions required to provide retirement benefits under the plan are made by the Company and are based on salary and number of years of employment. Normal retirement date is the anniversary date of the plan (March 15) nearest the employee's 65th birthday.

To be eligible an employee must have completed one full year of service on the anniversary date of the plan, must not be younger than 25 or older than 55.

An employee may elect early retirement with the consent of the Company, but at reduced retirement benefits. The plan also provides for death benefits upon death of the employee before retirement or prior to ten years after retirement date.

At the present time retirement benefits are funded through the purchase of annuity policies (which are combined with insurance policies to provide for death benefits where the employee qualifies for insurance).

PRINCIPAL SHAREHOLDERS

The following table sets forth information as at December 20, 1968 with respect to each person who owns of record, or is known to the Company to own beneficially, more than 10% of the Common Stock of the Company, and the record and beneficial ownership of all Directors and Officers as a group:

Name	No. of Shares Owned	Percentage of Class
Gerald and Diane Lee.....	409,000(1)	49.3
Gerald Ross	125,100	15.1
All Officers and Directors as a Group.....	675,500(1)(2)	81.4

(1) Of the 409,000 shares owned by them, 319,700 shares are owned of record by Gerald Lee, and 89,300 shares are owned of record by his wife Diane Lee. However, each is a beneficial owner of all the shares owned by the other. Gerald and Diane Lee are also income beneficiaries of a trust which owns 61,000 shares of the Company's common stock and which was created by Mr. Samuel Lee.

(2) Including 52,250 shares which are owned by Mervyn Silver subject to an escrow agreement (See "Transactions with Management and Others") and the 61,000 shares held by the Trust referred to in Note (1) above.

Mr. and Mrs. Gerald Lee may be deemed "parents" of the Company as that term is defined in the Securities Act of 1933.

TRANSACTIONS WITH MANAGEMENT AND OTHERS

On June 28, 1963, the Company issued an aggregate of 24,500 shares of its Common Stock in exchange for 55% of the outstanding capital stock of Cryotemp Products, Inc. Of such 24,500 shares, 20,045 shares were issued to R & H Metal Products Corp. ("R & H") and 4,455 shares to George Mauder. In October, 1968, R & H transferred such 20,045 shares, as a dividend, to Henry Gutman (11,024 shares) and to Leon Guttman (9,021 shares), its shareholders. The remainder of 45% of the outstanding stock of Cryotemp Products, Inc. had previously been owned by the Company.

On June 28, 1963, the Company issued an aggregate of 58,000 shares of its Common Stock to officers and directors of the Company in exchange for all of the outstanding Capital Stock of Frigitemp Laboratory and Hospital Equipment Corp. The names of the shareholders of Frigitemp Laboratory and Hospital Equipment Corp. who received such shares of the Company, and the number of shares received by each of them, are as follows:

Name of Person	No. of Shares Received
Gerald Lee	55,600 Shares
Gerald Ross	1,600 Shares
Mervyn Silver	800 Shares

Mr. Leon Guttman and Mr. Henry Gutman, the sole shareholders of R & H, are also principal stockholders of Livonia Herzl Corp., which is the owner of premises 329 Herzl Street, in which

building the Company leases approximately 60% of the space occupied by it. The 6% second mortgage on such property is held by Diane Lee, a principal shareholder of the Company and the wife of Gerald Lee, president, director and a principal shareholder of the Company. The unpaid balance of such second mortgage as of December 31, 1968 was approximately $3,275. It is payable in constant monthly installments of $136 (inclusive of interest) and is self-liquidating. In the opinion of the Company's management the prices paid by the Company to E & H for work done by it, and rental paid by the Company to Livonia Herzl Corp., are competitive with prices and rentals charged throughout the industry.

As of December 31, 1968, Mr. Mervyn Silver, an officer and director of the Company, was indebted to the Company in the amount of $19,500, all of which is non-interest bearing. Such indebtedness represents the unpaid balance of the purchase price of 61,750 shares of the Company's Common Stock purchased by Mr. Silver from Mr. Gerald Lee in October 1966, at a price of $24,375, which was payable in ten annual installments of $2,437 each, each annual installment being payable on December 26th. Mr. Silver has made the payments due in December, 1967 and December, 1968, which are the only payments due to date. In December 1966, prior to receipt of any of the payments for such stock from Mr. Silver, Mr. Gerald Lee assigned to the Company his rights in his contract with Mr. Silver in satisfaction of Mr. Gerald Lee's then indebtedness to the Company in the amount of $24,375 which represented non-interest bearing advances made by the Company to Mr. Gerald Lee from time to time. Pursuant to the terms of the purchase agreement, the shares are held in escrow by Irwin Levine, Esq., 377 Broadway, New York City, to be released to Mr. Silver at the rate of 4,750 shares upon each annual payment of $2,437 by Mr. Silver. The balance of 18,000 of the shares are to be released when Mr. Silver makes the final payment due under the purchase agreement. As of the date of this Prospectus, 9,500 shares have been released to Mr. Silver as a result of the payments made to date. Mr. Silver has all rights as a shareholder with respect to all such shares (including the right to vote all the remaining 52,250 shares still in escrow and to receive dividends thereon, if any) so long as he is not in default on his payments. If Mr. Silver should default in making his payments, the balance of the shares in escrow at the time of such default may be disposed of as provided by law for the disposition of security, or the Company may, at its option, accept the shares in escrow at the time of such default in full satisfaction of the unpaid balance of Mr. Silver's obligation. Mr. Silver may prepay his obligation to the Company in full at any time and thereby release all of his shares from escrow.

During 1967 and the early part of 1968, the Company acted as purchasing agent for Frigitemp Caribbean Corp. ("Caribbean"), a corporation organized under the laws of the Commonwealth of Puerto Rico. Messrs. Gerald Lee, Gerald Ross and Mervyn Silver, officers, directors and principal shareholders of the Company, own 65% of Caribbean's outstanding stock. The other shareholder of Caribbean is a non-affiliated person who managed its operations, which consisted of the sale in Puerto Rico of product and units acquired from or through the Company. The Company received 10% commission on all purchases made for Caribbean. Such commissions amounted to approximately $9,000 in 1967 and approximately $5,700 for the first nine months of 1968. Caribbean's business operations were not conducted at a loss. However, the management of Caribbean has decided to discontinue its business operations.

In 1968, Section Cold Fixtures Corp., a New York corporation ("Section Cold"), discontinued its separate operations. Messrs. Gerald Lee and Mervyn Silver are the owners of all of

Section Cold's outstanding stock. Some of Section Cold's operations were taken over by Cryotemp Products, Inc. (the Company's wholly owned subsidiary), which also assumed all of such corporation's liabilities and acquired all of its assets. Certain of Section Cold's operations (primarily the manufacture of wooden walk-in refrigerators) which were not taken over by Cryotemp were discontinued. Section Cold's assets which were acquired consisted of inventory which was acquired at cost ($19,250) and fixed assets which were acquired at original cash cost ($12,389) before depreciation (approximately $6,000 at time of acquisition). The liabilities assumed by Cryotemp included a bank loan of $10,000, accounts payable of $3,644, an account payable of $11,636 owed to the Company by Section Cold and $1,360 on account of Mr. Lee's and Mr. Silver's equity interest in Section Cold. Total liabilities assumed by Cryotemp aggregated $30,279 and in addition Cryotemp paid $1,360 for Messrs. Lee's and Silver's equity interest in Section Cold.

From time to time the Company has made non-interest bearing loans to officers and directors. All such loans except that owed by Mr. Mervyn Silver (see above) were repaid prior to December 31, 1967. The Company does not intend to make any loans to its officers or directors in the future.

DESCRIPTION OF COMMON STOCK

The Company has an authorized capital of 2,000,000 shares of Common Stock, $.10 par value. Holders of shares of Common Stock are entitled to dividends when and as declared by the Board of Directors from funds legally available therefor, and upon liquidation, are entitled to share pro rata in any distribution to shareholders. The holders of shares of Common Stock have one vote per share and do not have preemptive rights. Shares of Common Stock are not redeemable, do not have any conversion rights and are not liable for assessments or further calls. Under Section 630 of the New York Business Corporation Law, each of the ten largest shareholders of every corporation subject thereto, the shares of which are not listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, is liable for debts, wages or salaries due for services performed for the corporation by employees.

The Company will furnish its shareholders with annual reports containing certified financial statements.

Non-Cumulative Voting

The Common Stock has non-cumulative voting rights, which means that the holders of more than 50% of the shares voting for the election of directors can elect 100% of the directors, and, in such event, the holders of the remaining less than 50% of the shares voting for the election of directors will not be able to elect any person or persons to the Board of Directors. Officers and directors of the Company together with members of their families, will own more than 50% of the outstanding shares of Common Stock upon the completion of this Offering.

Dividends

The Company has paid no dividends on its Common Stock and anticipated capital requirements of the Company makes it unlikely that any dividends will be declared in the near future.

Transfer Agent

The Transfer Agent for the Common Stock will be Registrar and Transfer Company, 140 Cedar Street, New York, N. Y.

DESCRIPTION OF THE DEBENTURES

The Debentures are limited to the principal amount of $250,000, all of which are being offered hereby, and will be unsecured obligations of the Company. The Debentures will be issuable as registered Debentures without coupons in denominations of $50, and any multiple thereof. The Debentures will be exchangeable and transferable at the office of the Debenture Registrar. No service charge will be made for the transfer or exchange of Debentures but the Company may require payment of sums sufficient to cover any tax or other governmental charge. The Debenture Registrar will be Registrar and Transfer Company.

The Debentures are not issued under a trust indenture and the protection which the terms of a trust indenture would normally provide for Debentureholders will not be available to the purchasers of the Debentures offered hereby. The functions of a trustee under a trust indenture include acting as representative of the Debentureholders with respect to obligations of the Company and the enforcement of the Debentureholders rights thereunder. As the Debentures are not issued under an indenture each Debentureholder may be left to his own devices to enforce his rights under the Debenture in the event of any default by the Company thereunder. The Debentureholders will not have made available to them at regular intervals or upon demand a list of the names and addresses of the other Debentureholders so that communications may be had among them for the sake of acting together in their common interest or for any other purpose. The Company will send to the Debentureholders the same reports that it will send to its shareholders.

Payment of Principal and Interest

The Debentures will bear interest at the rate of 5 per cent per annum from February 1, 1959 and, except for interest payable on any redemption of Debentures other than a February 1 or August 1, will be payable semi-annually on February 1 and August 1, of each year, by checks mailed to Debentureholders of record on the January 15 or July 15 next preceding the interest payment date. The Debentures will mature on February 1, 1979, and payments of principal and premium, if any, and interest payable on redemption other than on a February 1 or August 1, will be made at the office of the Debenture Registrar in New York, N. Y.

Redemption

The Debentures are to be subject to redemption, upon not less than 30 days' notice, in any year commencing February 1, 1971 at any time, in whole or in part, at the election of the Company, at a redemption price equal to the percentage of the principal amount set forth below if redeemed in the 12-month period ending the last day of January in the years indicated together with accrued interest to the redemption date:

1972	105%
1973	104%
1974	103%
1975	102%
1976	101%
Thereafter	100%

The notice of redemption is required to be sent by registered mail directed to the registered holder of the Debenture at his latest address appearing on the records of the Company or the Debenture Registrar. In the event that a Debenture is called for redemption the holder's right of conversion will be lost unless such Debenture is converted prior to the close of business on the last business day before the redemption date.

There are no sinking fund provisions for the Debentures.

Conversion

Any Debenture or any portion of the principal amount thereof which is $50 or an integral multiple of $50 will be convertible, at its principal amount, into Common Stock of the Company, at the option of the holder, at any time or from time to time on or before maturity (or prior to the close of business on the business day prior to the date fixed for redemption thereof) at the conversion price of $5 per share. The conversion price is subject to adjustment upon the occurrence of certain events in order to protect the Debentureholders against dilution. The events requiring such adjustments and changes include stock dividends, split-ups, combinations and reclassifications. In the event that the Company sells shares of its Common Stock at a price more than 20% below the conversion rate, the Company's Board of Directors will make an appropriate adjustment to the conversion price. The Company will reserve a sufficient number of shares of its Common Stock for issuance upon conversion of all of the Debentures.

No fractional shares will be issued upon conversion, but a cash adjustment will be made. No adjustment in respect of interest or dividends will be made upon conversion.

Subordination

The Debentures will be subordinated as to principal (and premium, if any) and interest to all other indebtedness of the Company other than trade accounts payable and trade notes payable ("Senior Indebtedness"), whether existing prior to the issuance of the Debentures or thereafter incurred.

Upon any distribution of assets of the Company in connection with the dissolution, winding up, liquidation or reorganization of the Company, all Senior Indebtedness shall first be paid in full, or provision made for such payment, before the holders of the Debentures shall be entitled to receive payment upon the principal of (and premium, if any) or interest on the Debentures. Due to the subordination provisions of the Debentures, upon liquidation of the Company, if it should occur, the Company's trade creditors may receive less ratably than the holders of Senior Indebtedness but more ratably than the holders of the Debentures.

Default

The unpaid principal portion of the Debentures and accrued interest thereon will become immediately due and payable on the following events of default: failure to pay principal and premium, if any as and when the same shall become due either at maturity, upon redemption, by declaration or otherwise; failure to pay interest within 90 days of due date; failure to pay senior indebtedness for 90 days; failure by the Company to perform any other agreement contained in the Debenture within 90 days after written notice thereof to the Company by the holders of not less than 20% of the Debentures then outstanding, and certain events of bankruptcy, insolvency and reorganization. After remedy of any default, the majority in principal amount of Debentures then outstanding may waive a default and its consequences.

The Company is not required to furnish the holders of the Debenture with periodic evidence as to absence of default on its part or as to compliance with the terms of the Debentures.

Federal Tax Consequence of Original Issue Discount

Inasmuch as the Debentures are being offered as a unit with the Common Stock and the Warrants, an allocation of the total price for the Unit among its component securities (which may be different than set forth on the cover page of this Prospectus) will cause the Debentures to be deemed to be issued for less than their principal amount. The excess of the principal amount of the Debentures over the portion of the price allocated to them may be treated as "original issue discount" under Section 1232 of the Internal Revenue Code of 1954, as amended. Holders of the Debentures may, upon a sale of the Debentures, or upon redemption or retirement of the Debentures realize ordinary income to the extent of the original issue discount. The Company will be able to amortize and deduct for Federal income tax purposes the amount of the original issue discount.

DESCRIPTION OF THE WARRANTS

Each Warrant will entitle the holder thereof to purchase one share of Common Stock of the Company at a price of $10 per share at any time on or prior to January 31, 1974. The Warrants are immediately separable from the Units and immediately transferable. The Warrants will provide for adjustment of the exercise price of the Warrants and change of the number and kind of shares of Common Stock or other securities purchasable upon exercise of the Warrants upon occurrence of certain events in order to protect the Warrant holders against dilution. The events requiring such adjustments and changes include stock dividends, split-ups, combinations and reclassifications. In the event that the Company sells its Common Stock at a price more than 20% below the exercise price, the Company's Board of Directors will also make an appropriate adjustment to the exercise price and the number of shares purchasable upon exercise. The Company will reserve a sufficient number of shares of its Common Stock for issuance upon exercise of all of the Warrants.

The Company has registered under the Securities Act of 1933, the shares of Common Stock to be issued upon exercise of the Warrants offered hereby, and will use its best efforts to maintain the effectiveness of such registration during the entire period of exercisability of the Warrants. The Warrant Agent will be Registrar and Transfer Company.

UNDERWRITING

Alessandrini & Co., Inc. has entered into an underwriting agreement with the Company, a copy of which has been filed as an exhibit to the Registration Statement filed by the Company with the Securities and Exchange Commission. The following is a summary of certain provisions of the Underwriting Agreement.

The Company has engaged the Underwriter as its exclusive agent to sell 5,000 Units consisting of an aggregate of 80,000 shares of its Common Stock, $.10 par value per share, $250,000 principal amount of 5% Subordinated Convertible Debentures due 1979 and 80,000 Common Stock Purchase Warrants, each consisting of 16 shares of Common Stock, a $50. Debenture and 10 Warrants, to the public on a "best efforts" basis, at the public offering price of $150. per Unit. There can be no assurance that all or any of such Units will be sold. There will be no refund to purchasers if all of the Units offered hereby are not sold.

The Underwriter will receive a commission of $15 per Unit sold. There is no separate expense allowance payable to the Underwriter, who is required to pay its legal, advertising and other expenses out of the commissions received by it. The Underwriter may allow a selling concession to selected dealers of $7.50 per Unit, which selected dealers may reallow a concession not in excess of $2.50 per Unit to other members of the National Association of Securities Dealers.

The Company will issue to the Underwriter and a registered representative thereof, Mr. Raymond Weiss, at no cost warrants to purchase shares of the Common Stock of the Company at the rate of warrants to purchase 800 shares for every 500 Units sold. If all of the 5,000 Units offered hereby are sold, the Underwriter will receive an aggregate of 8,000 warrants. Such warrants are exercisable and transferable one year after the date appearing on the front cover of this Prospectus, and up to five years after such date. Each warrant will entitle the holder thereof to purchase one share of the Company's Common Stock at a cost of $1.00. 25% of the warrants issuable to the Underwriter will be issued to Mr. Raymond Weiss in consideration of services rendered by Mr. Weiss to the Underwriter in supervising the underwriting arrangements under the Underwriting Agreement. Any profit realized by the Underwriter, Mr. Weiss or their transferees in the sale of the warrants or the underlying shares may be deemed additional underwriting compensation. The exercise of the warrants may result in the dilution of the equity interest held by the public stockholders. Although the Company presently has no need for additional working capital in excess of the amount to be realized under the present offering, during the life of such warrants the Company may be deprived of favorable opportunity to procure additional equity capital if it should be needed for the purposes of its business. The holders of such warrants may be expected to exercise them at a time when the Company would in all likelihood be able to obtain equity capital if needed by sale of a new offering on terms more favorable than those provided for by such warrants. The Underwriting Agreement provides that at the request of the Underwriter and under certain circumstances the Company shall undertake, at the Company's expense, to register the said warrants and the underlying shares under the Securities Act of 1933.

The Underwriting Agreement may be terminated at the discretion of the Underwriter if (a) the Company or any of its subsidiaries shall have sustained a loss on account of fire, earthquake, flood, accident, explosion, strike, riot, labor disturbance, or any other like reason, so as in the judgment of Underwriter to interfere materially with the continued operation of the Company's business or which materially and adversely affects the Company; (b) trading in securities on the New York Stock Exchange shall have been suspended or limited, or minimum prices shall have been established on said Exchange or any new restrictions on transaction in securities shall have been established by said Exchange or by law or by the Securities and Exchange Commission or by any other federal or state authority, which, in the judgment of the Underwriter, materially affect the market for the securities; (c) a banking moratorium shall have been declared by federal or New York State authorities; (d) the Company fails, refuses or is unable to comply with the terms of the Underwriting Agreement, or (e) the Underwriter believes that no favorable market exists for the sale of the Units offered hereby.

The Underwriting Agreement also provides for certain reciprocal rights of indemnity between the Company and the Underwriter, including liabilities under the Securities Act of 1933, as amended.

See "Management" for the Underwriter's right to designate one director of the Company.

LEGAL OPINIONS

Legal matters in connection with the sale of the securities offered hereby will be passed upon for the Company by Messrs. Feder & Kaszovitz, 37 Wall Street, New York, New York and for the Underwriter by Messrs. Robinson, Silverman, Pearce, Borden & Ball, 230 Park Avenue, New York, New York.

EXPERTS

The financial statements and related notes included in this Prospectus have been included in reliance on the opinion of Louis Sternbach & Co., independent certified public accountants to the extent indicated therein, and on their authority as experts in auditing and accounting.

ADDITIONAL INFORMATION

This Prospectus omits certain information contained in the Registration Statement, and the exhibits and schedules relating thereto, which the Company has filed with the Securities and Exchange Commission, Washington, D. C. under the Securities Act of 1933, as amended, and to which reference is hereby made for further information concerning the Company and the securities offered hereby.

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To Frigitemp Corp.:

We have examined the consolidated balance sheet of Frigitemp Corp. and Subsidiaries as of June 30, 1968, the related consolidated statements of income for the five years and six months then ended and the related consolidated statements of retained earnings and capital in excess of par value for the three years and six months then ended. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. The financial statements include the operations of Cryotemp Products, Inc. and Frigitemp Laboratory and Hospital Equipment Corp., which were acquired by Frigitemp Corp. on June 28, 1968, in a pooling of interests transaction as explained in Note 1 of Notes to Financial Statements of Frigitemp Corp. and Subsidiaries.

We observed the taking of the physical inventories at June 30, 1968 but did not perform the audit procedure for all prior periods as we were not retained as auditors until that time. We satisfied ourselves by other auditing procedures that the inventories were fairly stated for all prior periods.

In our opinion, the accompanying consolidated balance sheet, consolidated statements of income and consolidated statements of retained earnings and capital in excess of par value present fairly the financial position of Frigitemp Corp. and Subsidiaries at June 30, 1968 and the results of its operations for the five years and six months then ended in conformity with generally accepted accounting principles applied on a consistent basis during the period under review.

LOUIS STERNBACH & COMPANY
Certified Public Accountants

New York, New York
August 5, 1968

FRIGITEMP CORP. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

	As at June 30, 1963 (Notes 1 and 2)	As at September 30, 1963 (Unaudited)
Current Assets:		
Cash	$ 19,294	$ 8,166
Accounts receivable	651,935	675,296
Notes receivable—current (Note 7)	16,656	—
Less allowance for doubtful accounts	(29,689)	(27,031)
Inventories at the lower of cost or market (Note 4)	96,144	157,480
Other current assets	4,208	21,610
Total Current Assets	758,548	835,521
Property, Plant and Equipment, at cost:		
Furniture and fixtures	18,451	18,451
Machinery and equipment	15,840	15,840
Transportation equipment	8,809	8,809
	43,100	43,100
Less: accumulated depreciation	16,092	16,968
Total Property, Plant and Equipment	27,008	26,132
Other Assets:		
Loans receivable—officer (Note 6)	24,882	22,438
Notes receivable—non current (Note 3)	55,415	18,817
Other assets	4,955	9,146
Total Other Assets	85,252	50,401
	$870,808	$912,054

FRIGITEMP CORP. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

	As at June 30, 1968 (Notes 1 and 2)	As at September 30, 1968 (Unaudited)
Current Liabilities:		
Notes payable—banks	$103,540	$ 53,540
Notes payable—trade	44,404	35,187
Accounts payable	381,721	416,330
Accrued payroll	10,239	11,589
Accrued expenses and taxes payable	14,920	13,811
Customers' deposits	17,823	22,888
Federal, State and City taxes payable	24,490	36,885
Total Current Liabilities	597,137	590,230
Other Liabilities:		
Notes payable—non current	4,060	3,175
Total Liabilities	601,197	593,405
Commitments and Contingent Liabilities (Note 7)		
Shareholders' Equity (Note 9):		
Capital stock, $.10 par value		
Authorized 2,000,000 shares		
Issued and outstanding 700,000 shares	70,000	
829,500 shares		82,950
Capital in excess of par value	77,000	102,900
Retained earnings	122,611	132,799
Total Shareholders' Equity	269,611	318,649
	$870,808	$912,054

FRIGITEMP CORP. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF RETAINED EARNINGS (Notes 1 and 2)

	Calendar Year			For the Six Months Ended June 30, 1968	For the Nine Months Ended September 30, 1968
	1965	1966	1967		(Unaudited)
Balance—beginning of period.....	$35,404	$49,176	$61,122	$ 82,501	$ 82,501
Add: Net income.....	13,772	11,946	21,379	40,110	50,298
Balance—end of period.....	$49,176	$61,122	$82,501	$122,611	$132,799

The accompanying notes are an integral part of this Statement.

FRIGITEMP CORP. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CAPITAL IN EXCESS OF PAR VALUE
(Notes 1 and 2)

	Calendar Year			For the Six Months Ended June 30,	For the Nine Months Ended September 30,
	1965	1966	1967	1968	1968
					(Unaudited)
Balance—beginning of period.....	—	$1,250	$1,250	$ 1,250	$ 1,250
Transfer from capital stock account upon recapitalization	—	—	—	75,750	75,750
Capital contributed in excess of par value of common stock issued.....	—	—	—	—	25,900
Excess paid over stated value of capital stock	1,250	—	—	—	—
	$1,250	$1,250	$1,250	$77,000	$102,900

The accompanying notes are an integral part of this Statement.

FRIGITEMP CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

September 30, 1968

(Data relating to the nine months ended September 30, 1968 is unaudited)

Note 1—Recent Acquisitions:

On June 28, 1968, the Company acquired all of the outstanding capital stock of Frigitemp Laboratory and Hospital Equipment Corp. a New York corporation, in exchange for 58,000 shares of the Company's Capital Stock. The acquisition is being accounted for as a pooling of interests; no adjustment was necessary to the capital surplus or retained earnings accounts as Frigitemp Laboratory and Hospital Equipment Corp. has been in existence less than three years.

On June 28, 1968, the Company also acquired the remaining 55% of the outstanding stock of Cryotemp Products, Inc., a New York corporation, in exchange for 24,500 shares of the Company's Capital Stock. The acquisition, which increased the Company's ownership of Cryotemp to 100%, is being accounted for as a pooling of interests; no adjustment was necessary to the capital surplus or retained earnings accounts as Cryotemp has been in existence less than three years.

On June 28, 1968, the Company purchased substantially all of the assets subject to the liabilities of Section Cold Fixtures Corp., a company owned by Messrs. Lee and Silver, at a net cost to the Company of $1,360 as more fully described in the Prospectus under the heading "Transactions with Management and Others."

Note 2—Principles of Consolidation:

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries, Cryotemp Products, Inc. and Frigitemp Laboratory and Hospital Equipment Corp. Material intercompany accounts and transactions have been eliminated. Since the subsidiaries are wholly owned the investment and capital accounts of said subsidiaries have been eliminated in consolidation. The Company's equity in underlying net assets of consolidated subsidiaries exceeded its investment therein by $34,399 at June 30, 1968 and by $20,751 at September 30, 1968, which is included in consolidated retained earnings.

Note 3—Notes Receivable:

Included in the amount shown for notes and accounts receivable at September 30, 1968 are receivables arising from sales made in the ordinary course of business on an installment basis. Such receivables are due as follows:

Due Within Two Years	14,444
Due After Two Years	4,373
	18,817

Note 4—Inventories:

The inventories are priced at lower of cost or market on a first in first out basis.

Inventories used in the computation of cost of sales were as follows:

	June 30, 1968	September 30, 1968
Raw materials and supplies	$19,250	$ 6,370
Work in process	23,793	24,775
Finished goods	48,101	126,335
Total	$96,144	$157,480

December 31, 1967	173,611
September 30, 1967	155,531
June 30, 1967	153,730
December 31, 1966	110,671
December 31, 1965	44,851
December 31, 1964	48,755
December 31, 1963	59,956
January 1, 1963	58,750

NOTES TO CONSOLIDATED FINANCIAL STATEMENT—(Continued)

Note 5—Fixed Assets:

Depreciation has been provided on a straight line basis for all assets acquired.

The number of years over which the assets are depreciated are as follows:

Machine and equipment	8 years
Furniture and fixtures	10 years
Transportation equipment	4 years

Maintenance and repair costs are charged to operations as incurred; renewals and betterments are charged to the aggregate asset accounts.

On retirement or sale of property, the respective property accounts are reduced by the cost of the property retired or sold and the accumulated depreciation thereon is eliminated, and resulting profits or losses are credited or charged to operations.

Note 6—Loan Receivable-Officer:

Loan receivable from Mervyn Silver, a Vice President of the Company arose from his purchase of 65 shares of the stock of the Company which has become 61,750 shares after recapitalization, from Gerald Lee, President of the Company and the assumption of the latter's obligation to the Company in the amount of $24,375.00 payable in ten equal annual installments. Final installment is due on December 26, 1976. For information as to the escrow terms under which such shares are being held, see "Transactions With Management and Others" in the Prospectus.

Note 7—Commitments and Contingent Liabilities:

The Company is contingently liable on a note payable to the Manufacturers Hanover Trust Co. endorsed by a supplier in the amount of $10,000.00. This note was paid on July 10, 1968.

Commitments under two leases of space expiring July 31, 1969 and May 31, 1970, respectively, currently require annual payments at the rate of $15,000. See page 8 of the prospectus.

The Company is contingently liable on notes receivable discounted in the amount of $54,742 and $59,383 at June 30, 1968 and September 30, 1968, respectively.

Note 8—Notes Payable:

Notes payable in the amount of $50,000 are guaranteed by the officers of the Company.

Note 9—Shareholders Equity:

On June 23, 1968, the Company amended its certificate of incorporation to authorize 2,000,000 shares of common stock with a par value of 10¢ per share. Pursuant to such amendment, the present shareholders holding 650 shares of common stock with no par value, have exchanged said shares for 617,500 shares of common stock with a par value of 10¢ per share. See Note 1 for information concerning issuance of additional 82,500 shares on such date.

Note 10—7% Investment Credit:

The company follows the policy of reducing its Federal income tax expense by the full amount of the 7% investment credit. The credit was not material for any of the periods under review.

Note 11—Recent Transactions:

On August 5, 1968, the Company sold 129,500 shares of its common stock in a private offering for $.30 per share.

The Company entered into an agreement to issue warrants, exercisable over a four year period commencing one year from the public offering date, to purchase a maximum of 8,000 shares of its common stock at a price of $1, as more fully described under the heading "Underwriting" in the Prospectus.

Note 12—Supplementary Profit and Loss Information:

	For the Calendar Year					For the Six Months Ended June 30, 1968	For the Nine Months Ended Sept. 30, 1963
	1963	1964	1965	1966	1967		
Charged to cost of sales:							
Maintenance and repairs	$1,099	$1,118	$1,269	$ 850	$ 1,146	—	—
Payroll and other taxes	478	934	835	721	1,363	$ 2,920	$ 2,276
Rents	6,480	5,805	5,670	5,670	8,537	5,535	8,910
Charged to selling, general and administrative expenses:							
Depreciation and amortization	2,249	2,819	2,839	2,535	2,812	1,726	2,602
Payroll and other taxes	4,301	8,406	7,968	6,493	12,263	26,283	20,488
Rents	720	645	630	630	948	615	990

Amended Affidavit of Charles L. Powell in Support of Fund Defendants Motion to Dismiss

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

STATE OF COLORADO }
COUNTY OF DENVER } ss.:

CHARLES L. POWELL, being duly sworn, deposes and says:

I am Vice President of Financial Industrial Fund, Inc. (FIF), Financial Venture Fund, Inc. (FVF); and Financial Dynamics Fund, Inc. (DFD).

During the period between 1969 and 1972 the aforementioned funds sustained the following net losses in Frigitemp Securities: Financial Dynamics Fund, Inc., $774,530.02; Financial Venture Fund, Inc., $815,520.13; Financial Industrial Fund, Inc., $409,646.65.

CHARLES L. POWELL
Charles L. Powell

(Sworn to by Charles L. Powell on May 2, 1974.)

Joinder of Defendants Financial Programs, Inc., John M. Butler and Robert E. Anton in Motion to Dismiss or to Transfer

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Civil Action 74-1335

—o—

FRIGITEMP CORP., GERALD LEE, GERALD ROSS, HENRY GUTMAN and LEON GUTTMAN,

Plaintiffs,

VS.

FINANCIAL DYNAMICS FUND, INC., FINANCIAL INDUSTRIAL FUND, INC., FINANCIAL VENTURE FUND, INC., FINANCIAL PROGRAMS, INC., ROBERT E. ANTON and JOHN M. BUTLER,

Defendants.

—o—

Defendants, Financial Programs, Inc., John M. Butler and Robert E. Anton hereby join in and incorporate herein by reference the motion and the memorandum of law in support of the motion of Defendants, Financial Dynamics Fund, Inc., Financial Industrial Fund, Inc. and Financial Venture Fund, Inc., to dismiss and strike the Complaint pursuant to Rules 11, 12(b) (6) and 9(b) of the Federal Rules of Civil Procedure or in the alternative to transfer the action to the United States District Court for the District of Colorado pursuant to 28 U.S.C. 1404(a).

Dated: May 6, 1974.

Joinder of Defendants Financial Programs, Inc., John M. Butler and Robert E. Anton in Motion to Dismiss or to Transfer

Respectfully submitted,

Office for Service of Process:
SKADDEN, ARPS, SLATE, MEAGHER
& FLOM
919 Third Avenue
New York, New York 10022

Attn: Robert W. Sweet, Esq.

IRELAND, STAPLETON, PRYOR & HOLMES
PROFESSIONAL CORPORATION
1700 Broadway, Suite 2017
Denver, Colorado 80202

By /s/ HARDIN HOLMES
Hardin Holmes, a member of the firm admitted to practice before this Court

Motion to Dismiss for Lack of Jurisdiction as to Defendant John M. Butler

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action 74-1335

[SAME TITLE]

Defendant John M. Butler, appearing specially, moves this Court pursuant to Rule 12(b) (2), Federal Rules of Civil Procedure, to dismiss this action as to him on the grounds that this Court lacks jurisdiction over his person.

Dated: May 6, 1974.

Respectfully submitted,

Office for Service of Process:
SKADDEN, ARPS, SLATE, MEAGHER
& FLOM
919 Third Avenue
New York, New York 10022

Attn: Robert W. Sweet, Esq.

IRELAND, STAPLETON, PRYOR & HOLMES
PROFESSIONAL CORPORATION
1700 Broadway, Suite 2017
Denver, Colorado 80202

By /s/ HARDIN HOLMES
Hardin Holmes, a member of the firm admitted to practice before this Court

Motion to Dismiss for Lack of Jurisdiction as to Defendant Robert E. Anton

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action 74-1335

[SAME TITLE]

Defendant Robert E. Anton, appearing specially, moves this Court pursuant to Rule 12(b) (2), Federal Rules of Civil Procedure, to dismiss this action as to him on the grounds that this Court lacks jurisdiction over his person.

Dated: May 6, 1974.

Respectfully submitted,

Office for Service of Process:
SKADDEN, ARPS, SLATE, MEAGHER
& FLOM
919 Third Avenue
New York, New York 10022

Attn: Robert W. Sweet, Esq.

IRELAND, STAPLETON, PRYOR & HOLMES
PROFESSIONAL CORPORATION
1700 Broadway, Suite 2017
Denver, Colorado 80202

By /s/ HARDIN HOLMES
Hardin Holmes, a member of the firm admitted to practice before this Court

Defendant Robert E. Anton's Joinder in Memorandum of Law

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action 74-1335

[SAME TITLE]

Defendant Robert E. Anton hereby joins in and incorporates by reference the Memorandum of Law in Support of Motion to Dismiss as to Defendant John M. Butler which has been filed herein and is applicable to and states the reasons for Defendant Anton's motion to dismiss as to himself. As evidenced by his affidavit, the only contacts Defendant Anton has had with New York have been as an officer of the defendant corporations. For the reasons set out in that memorandum, his contacts with New York as an agent of the defendant corporations do not subject him to the personal jurisdiction of this Court.

Dated: May 6, 1974.

Defendant Robert E. Anton's Joinder in Memorandum of Law

Respectfully submitted,

Office for Service of Process:
Skadden, Arps, Slate, Meagher
& Flom
919 Third Avenue
New York, New York 10022

Attn: Robert W. Sweet, Esq.

Ireland, Stapleton, Pryor & Holmes
Professional Corporation
1700 Broadway, Suite 2017
Denver, Colorado 80202

By /s/ Hardin Holmes
Hardin Holmes, a member of the firm admitted to practice before this Court

Affidavit of John M. Butler in Support of Motion to Dismiss for Lack of Jurisdiction

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 74-1335

[SAME TITLE]

STATE OF COLORADO
CITY AND COUNTY OF DENVER } ss.:

The undersigned John M. Butler, a defendant in this action, being duly sworn, deposes and says:

1. Service was made upon him by hand delivery of a copy of the summons and complaint on March 28, 1974 in Denver, Colorado.

2. He has been a resident of the State of Colorado for the past ten (10) years and is not now nor never has been domiciled in the State of New York.

3. He conducts no personal business in the State of New York.

4. His only business contacts with the State of New York have been as an officer of the defendant corporations.

5. He has made only one business trip to New York as an officer of the defendant corporations which in any way related to Frigitemp. On April 8, 1974, after the Com-

Affidavit of John M. Butler in Support of Motion to Dismiss for Lack of Jurisdiction

plaint had been filed, he went to New York on behalf of the defendant corporations to confer with New York counsel.

6. He had no connection whatsoever with the purchases of Frigitemp stock by the defendant corporations.

7. His only connections with the purchase by Financial Venture Fund of the Frigitemp debenture ("Private Placement") were as follows:

(a) He reviewed the closing documents on the purchase of the debenture, and as secretary of the Funds made attestation signatures on such documents.

(b) He participated in several phone calls with Frigitemp in New York in relation to the form of those documents.

8. His only connection with the sale of the Frigitemp stock is that he might have been consulted in Denver, Colorado as an officer of Financial Programs generally as to those sales along with the sales of securities of other companies in the ordinary course of business.

9. He did not participate in any conspiracy to violate the Securities Exchange Act of 1934, nor the Securities Act of 1933, nor to commit common law fraud in New York or anywhere else.

10. He has not consented to be sued in this Court.

JOHN M. BUTLER

(Sworn to by John M. Butler on May 1, 1974.)

Affidavit of Robert E. Anton in Support of Motion to Dismiss for Lack of Jurisdiction

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 74-1335

[SAME TITLE]

STATE OF COLORADO)
CITY AND COUNTY OF DENVER) ss.:

The undersigned Robert E. Anton, a defendant in this action, being duly sworn, deposes and says:

1. He was hand served, by the United States Marshal, with process in this action on April 16, 1974 in the State of Colorado.

2. He has been a resident of the State of Colorado for the past twenty-two (22) years and is not now nor never has been domiciled in the State of New York.

3. He conducts no personal business in the State of New York.

4. His only business contacts with the State of New York have been as an officer of the defendant corporations.

5. In the summer of 1971 he met with Frigitemp in New York to discuss the default of Frigitemp on interest payments due on their debenture. This was his sole contact with Frigitemp in New York.

Affidavit of Robert E. Anton in Support of Motion to Dismiss for Lack of Jurisdiction

6. As an officer of Financial Dyamics Fund, Inc., he purchased Frigitemp stock for Financial Dynamics Fund, Inc. He did not have any contract with Frigitemp in making the decision to purchase its securities.

7. He participated in the sale of the Frigitemp stock as an officer of the defendant corporations acting in the ordinary course of business.

8. He did not participate in any conspiracy to violate the Securities Exchange Act of 1934, nor the Securities Act of 1933, nor to commit common law fraud in New York or anywhere else.

9. He has not consented to be sued in this Court.

ROBERT E. ANTON

(Sworn to by Robert E. Anton on April 30, 1974.)

Affidavit of Gerald D. Fischer in Opposition to Defendants' Motion to Dismiss or to Transfer

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GERALD D. FISCHER, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and associated with the firm of Blackman Lefrak Myerson & Feld, counsel for plaintiff Frigitemp Corp. ("Frigitemp") and the individual plaintiffs. I submit this affidavit in opposition to the motion of defendants Financial Dynamics Fund, Inc., Financial Industrial Fund, Inc. and Financial Venture Fund, Inc. (the "Funds") and the other defendants to dismiss the complaint, pursuant to Rules 11, 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure or, in the alternative, to transfer the action to Colorado, pursuant to 28 U.S.C. 1404(a).

2. The primary thrust of the affidavits and memorandum submitted by the Funds is that the filing of the complaint in this action is sham and frivolous. The charges contained in the moving affidavit of Alan Steinberg are totally irrelevant to the basic issues on this motion: Does the complaint state actionable claims against the Funds and, if so, should those claims be litigated in this Court.

Affidavit of Gerald D. Fischer in Opposition to Defendants' Motion to Dismiss or to Transfer

As will be demonstrated in the affidavits and memorandum submitted by plaintiffs, both questions require an affirmative answer.

The Complaint

3. The complaint filed herein is based upon (a) the manipulation by the Funds, its management company, its officers, and one Bernard Deutsch ("Deutsch"), of the price of Frigitemp stock, between March 1969 and March 1970, by the acquisition by the Funds of all but a small part of the total shares of Frigitemp then held by the public and (b) the use by the Funds of material, inside and confidential information in connection with said purchases.

4. The complaint sets forth the fact of the Funds' wrongful cornering of the market of the common stock of Frigitemp as follows:

A. Frigitemp initially went public in January 1969, by the sale, through a registration statement, of 80,000 shares of common stock together with warrants to purchase and debentures convertible into an aggregate of another 100,000 shares (Complaint, para. 10).

B. Between March 1969 and March 1970 the Funds purchased in the open market a total of 142,100 shares of Frigitemp common stock, which shares constituted all but a small part of the common stock then available to the public (Complaint, para. 12 and 13). As stated in accompanying affidavit of Gerald Lee, from January, 1969 to March, 1970, a total of approximately 186,000 shares of Frigitemp was available to be traded by the public.

C. As a result of the Funds; open market purchases of Frigitemp's common stock, the market price of the stock rose from a price of $9 to a high of $37 per share (Complaint, para. 15). Attached to the accompanying affidavit of Gerald Lee as Exhibit C is a record of the prices of Frigitemp's stock in 1969 and 1970.

D. During the course of this massive stock acquisition by the Funds and on or about August 29, 1969, defendant Financial Venture Fund, Inc. purchased from Frigitemp $1,000,000 principal amount 5% convertible subordinated debenture and warrants to purchase 50,000 shares of common stock (Complaint, para. 16).

E. In connection with the aforesaid purchase and as a condition thereof, defendants required plaintiffs Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman, who were officers, or employees of Frigitemp, to contribute an aggregate of 100,000 shares of common stock owned by them to the capital of Frigitemp to reduce the total outstanding shares and to thereby immediately increase the earnings and book value per share of the common stock thereafter outstanding including the shares owned by the Funds (Complaint, para. 20-21).

F. The open market purchases by the Funds of the common stock of Frigitemp was based upon material, confidential and non-public information acquired by the Funds prior to and in connection with their purchases of the common stock and debenture of Frigitemp including the following (Complaint, para. 17-19 and see also the accompanying affidavit of Gerald Lee):

(a) That Frigitemp was about to engage and in fact was engaged in a program of corporate acquisitions and internal expansion.

(b) That an agreement was being negotiated to acquire and that Frigitemp had acquired on July 28, 1969 the Rath Company, the holders of patents to manufacture temperature and humidity controlled systems for containerized and other shipping.

(c) That an agreement was being negotiated to acquire and that Frigitemp had acquired in October 1969 R & H Metal Products Corp., a manufacturer of hospital and marine refrigeration equipment and food service equipment.

(d) That an agreement was being negotiated to acquire and that Frigitemp had acquired on June 16, 1970 Labequipco, Inc., a distributor of laboratory and hospital refrigeration, casework and furnishings.

(e) That an agreement was being negotiated to acquire and that Frigitemp had acquired on November 20, 1969 Special Projects, Inc., a manufacturer of fiberglass seating, paneling, planters and constructions for special interior effects.

(f) That as of August 29, 1969, a larger percentage of Frigitemp's sales and backlog was accounted for by hospital and environmental control and equipment units than that set forth in Frigitemp's prospectus of January 14, 1969.

(g) That officers, directors and employees of Frigitemp were to contribute and did contribute 100,000 shares of its common stock owned by them to the capital of Frigitemp thereby immediately reducing by that number its outstanding shares and increasing the earnings per share and book value per

share for the shares remaining outstanding, including those available to the public.

G. In connection with the Funds' purchase of the $1,000,000 debenture from Frigitemp and the contribution of 100,000 shares of the common stock of Frigitemp to its capital, required as a condition thereof, defendants failed to disclose to the individual plaintiffs the following material facts:

(a) that defendants were causing and had caused the Funds to acquire all but a small part of the shares of Frigitemp available to the public and had used and would continue to use confidential information in connection with said purchases;

(b) that the condition that Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman contribute to the capital of Frigitemp 100,000 of its outstanding shares of common stock then held by said plaintiffs, was intended to reduce the number of shares outstanding by that number and cause an immediate increase in earnings per share and book value per share for the [illegible]00 shares of Frigitemp's common stock then owned by and to be acquired by the Funds (Complaint, para. 21).

H. On or about September 3, 1969, at the time of the contribution to the capital of Frigitemp of the 100,000 shares of its common stock by the individual plaintiffs the market price for said shares was $21 per share (Complaint, para. 22).

Affidavit of Gerald D. Fischer in Opposition to Defendants' Motion to Dismiss or to Transfer

I. The individual plaintiffs allege that had they known the facts as aforesaid they would not have contributed their 100,000 shares of Frigitemp to the company's capital (Complaint, para. 23).

J. In February and March 1970 the Funds sold a total of 18,000 shares at a profit of not less than $130,000 (Complaint, para. 24-25).

K. In 1971 when the Funds sold their remaining 123,000 shares of Frigitemp they depressed the price of the stock thereby causing substantial damage to the remaining shareholders of Frigitemp (Complaint, para. 27).

L. On May 9, 1973 an alleged class action was commenced in this Court (*Betty Kaye* v. *Gerald Lee, et al.* (73 Civ. 2052)). The action is brought on behalf of all shareholders of Frigitemp who incurred losses in connection with their stock ownership. Frigitemp, in this action, alleges that any losses their shareholders suffered may have resulted from the wrongful manipulation of the market price of the shares of Frigitemp by the Funds and that said Funds may be liable to plaintiff for all losses and expenses incurred by Frigitemp in defending *Betty Kaye* v. *Gerald Lee, et al.* (Complaint, para. 28).

M. The first cause of action for common law fraud, brought on behalf of Frigitemp, claims that the acts of the defendants constituted a fraud and deceit against Frigitemp and its shareholders; an unlawful manipulation of the price of the shares of Frigitemp; and a misue of inside and confidential information, all resulting in substantial damage to Frigitemp and its shareholders. Frigitemp seeks to recover from the Funds the profits which the Funds realized

on their sale of Frigitemp stock in 1970 in an amount not less than $130,000, together with the investment advisory fees realized by defendant Financial Programs, Inc. by reason of the increase in the net asset value of the Funds attributable to the value of the Frigitemp shares; any commissions or other fees received by the defendants in connection with trading in the shares of Frigitemp; all damages, settlements and expenses incurred by Frigitemp in connection with the defense of *Kaye* v. *Lee*; and punitive damages of $1,000,000 (Complaint, para. 30-32).

N. The second cause of action brought on behalf of Frigitemp under Section 10(b) of the Securities Exchange Act of 1934 and Section 17(a) of the Securities Act of 1933 is based on the foregoing facts and seeks the same relief as the first cause of action (Complaint, para. 33-35).

O. The third cause of action is brought on behalf of the individual plaintiffs under Section 10(b) and 17(a) and seeks $21 per share for the 100,000 shares which they contributed to Frigitemp or a total of $2,100,000 together with punitive damages of $1,000,000 (Complaint, para. 36-38). Liability of the Funds is predicated upon their failure to disclose to the individual plaintiffs that the Funds owned and would acquire 142,100 shares of Frigitemp's public float, and that they were trading on the basis of non-public information.

P. The fourth cause of action is brought on behalf of the individual plaintiffs, is based on common law fraud and seeks recovery of the same amounts (Complaint, para. 39-41).

Q. Plaintiffs allege that at all relevant times defendant Financial Programs, Inc. was the investment advisor to the

Funds and defendants Robert E. Anton and John M. Butler were officers and employees of the defendant corporations (Complaint, para. 4 and 5).

R. All of the foregoing acts and transactions are alleged to have been entered into by the defendants with each other and pursuant to a conspiracy with each other and with John R. Hurley, James Frankenthaler and James Gassafackas, who were officers and employees of defendant Financial Programs, Inc. and with one Bernard Deutsch (Complaint, para. 11). Mr. Deutsch was a stock broker who was involved in all of the Funds' purchases of Frigitemp's securities; who furnished the Funds with much information about Frigitemp; and who assisted the funds in cornering the market in Frigitemp's stock. His relationship with the Funds is set forth in the accompanying affidavit of Gerald Lee.

5. As is obvious from the foregoing, the complaint contains simple, straightforward and substantial claims of common law fraud and violations of the federal securities laws on behalf of Frigitemp and the individual plaintiffs. They are clearly not, as the moving papers urge, "frivolous" and "sham".

6. Although the complaint sets forth specific facts substantiating the charges, an affidavit of Gerald Lee is also being submitted to respond to the various claims made by the defendants on this motion and to bring to the attention of the Court additional facts in connection therewith.

7. Finally, your deponent would like to comment on movant's contention that the complaint should be stricken

as sham or that the action should be transferred to the District of Colorado because of the fact that this complaint was filed immediately upon the breakdown of settlement discussions between the parties.

8. Attached hereto and submitted in opposition to the motion is an affidavit of Lloyd D. Feld, the attorney who, on behalf of Frigitemp, attempted to negotiate a settlement of the various claims of the parties prior to the commencement of this action.

9. Prior to said settlement discussions in January, 1974, the following relevant events had occurred:

A. On or about March 28, 1973, the Securities and Exchange Commission had commenced a civil proceeding against Frigitemp and certain officers of the company, including two of the plaintiffs herein, Messrs. Lee and Ross. The complaint for an injunction filed by the S.E.C. alleged, among other things, that there had been wrongful "manipulations of the market of the securities of defendant Frigitemp" resulting from, among other things, Bernard Deutsch's taking control over Frigitemp's securities and making it a "hot" issue so that the price of the stock would double. (See S.E.C. complaint, ¶ 12 A and 18, submitted as Exhibit to Defendants' Memorandum of Law).

B. The S.E.C. action was settled by a final judgment of permanent injunction and voluntarily consented to by the defendants. The judgment was entered into "only for purposes of this action and for no other purpose". The consents to said final judgment of permanent injunction specifically state that defendants consent to the entry of the judgment "without admitting or denying any of the allegations of the complaint".

C. After knowledge of the S.E.C.'s proceedings became public and on or about May 9, 1973, an action was filed in this Court entitled *Kaye* v. *Lee* allegedly brought on behalf of all persons who incurred losses in connection with the purchase of Frigitemp stock. The complaint in that action alleges the same claims as made by the S.E.C. Specifically, it is claimed that from January 1969 onward, the price of Frigitemp's stock was manipulated and artificially inflated to the detriment of the alleged class. As previously noted, plaintiffs herein urge that if there was a market manipulation, it was the Funds and Mr. Deutsch who caused it.

D. After the foregoing events and in 1974 an indictment was brought in this district against Bernard Deutsch, setting forth many of the claims raised by the S.E.C. in its proceeding, and based in large part upon the claims of market manipulation.

10. With this background, and some time in January 1974, Lloyd D. Feld, counsel for Frigitemp, contacted Mr. Steinberg, who had theretofore made an effort to contact Gerald Lee, the president of Frigitemp, directly. Mr. Steinberg advised Mr. Feld that he was counsel to the Funds and was investigating into the relationship between Frigitemp and the Funds. As the affidavit of Mr. Feld demonstrates, the parties attempted to settle the Funds' claims. Without admitting any liability to the Funds for their losses, Frigitemp attempted to amicably resolve the matter by the proposal of what it believed to be a good faith settlement offer. Steinberg rejected the proposal out of hand and threatened, as he had throughout the discussions, to sue. It became apparent to Mr. Feld during

the negotiations that the Funds had, in concert with Mr. Deutsch, engaged in a deliberate attempt to corner the market in Frigitemp's stock and to run up the price, while at the same time having access to private and inside information. Mr. Feld advised Mr. Steinberg that the relationship between the Funds and Mr. Deutsch raised serious questions; that Mr. Deutsch and the management of the Funds were at all times acting together and rewarding each other, in the form of illegal payments and other considerations; that the Funds had exercised no due diligence in connection with their investments; and that it ill-behooved the Funds to now seek to blame Frigitemp for the market losses suffered as a result of their own greed and wrongful conduct. With all of the facts in hand, and with Mr. Steinberg's rejection of Frigitemp's offer of settlement and continual threats at suit, and having told Mr. Steinberg repeatedly of numerous improper acts by the defendants, Mr. Feld had no alternative but to recommend that this action be commenced to seek vindication for the damage caused to the plaintiffs.

11. Throughout the settlement negotiations, Frigitemp desired a fair and reasonable disposition with the Funds. However, when it became obvious that the Fund's counsel was being unreasonable, Frigitemp had no alternative but to protect its interests and commence this suit in this district, the forum in which *Kaye* v. *Lee* and *U.S.A.* v. *Deutsch* are presently pending.

12. For all of the foregoing reasons, plaintiffs respectfully submit that this motion should be denied.

/s/ Gerald D. Fischer

(Sworn to by Gerald D. Fischer on May 16, 1974.)

Affidavit of Gerald Lee in Opposition to Defendants' Motion to Dismiss or to Transfer

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

GERALD LEE, being duly sworn, deposes and says:

1. I am the President of plaintiff Frigitemp Corp. ("Frigitemp") and one of the individual plaintiffs in this action. I submit this affidavit in opposition to the motion of the defendants to dismiss the complaint or to transfer the action to Colorado.

2. I am fully familiar with all of the facts and circumstances involved in this action.

3. I have been President of Frigitemp since 1955. In 1969, Frigitemp was engaged in the business of selling refrigerators, food service equipment and temperature controlled equipment. I, together with members of my family, and others in management, had built Frigitemp from a modest beginning to a point where it was in a position to offer its shares to the public.

4. Prior to January 1969, I had never been employed by a publicly owned company and had no familiarity whatsoever with the securities or investment banking business.

Affidavit of Gerald Lee in Opposition to Defendants' Motion to Dismiss or to Transfer

I never even owned shares of a public company save a few purchases made for my account by a relative.

5. Several months after Frigitemp's public offering and in March or April of 1969, I was advised by Mr. Bernard Deutsch, then a stockbroker with the firm of Jaffe & Co., that a mutual fund, whose name he did not disclose, was interested in purchasing a $1 million debenture from Frigitemp if Frigitemp was willing to sell one. I advised Mr. Deutsch that Frigitemp would be interested in discussing with any institutional investor a possible placement of its securities. At and prior to that time Mr. Deutsch was fully familiar with the current and proposed business of Frigitemp.

6. I next heard from Mr. Deutsch concerning the unnamed mutual fund in or about May or June 1969 when he advised me that a presentation could be made by Frigitemp to its representatives. Mr. Deutsch then arranged for me to meet these persons in Las Vegas, Nevada, in or about June 1969. I met there with Mr. Deutsch and his associate, Stanley Duboff, and was introduced to at least three other persons acting on behalf of Financial Venture Fund, Inc. ("FVF"), and its investment advisor Financial Programs, Inc., which was also the investment advisor to Financial Dynamics Fund, Inc. and Financial Industrial Fund, Inc. (FVF, Financial Dynamics Fund, Inc. and Financial Industrial Fund, Inc. are hereinafter referred to as the "Funds"). These representatives included John Hurley and two others.

7. The meeting was brief, less than one-half hour. FVF's representatives seemed more anxious to get to the gambling tables than in Frigitemp. I did have time to make a short presentation of the business and affairs of Frigitemp. I described Frigitemp's current business and the events which had occurred since January 15, 1969, the date of the prospectus used in connection with Frigitemp's public offering, the latest public document concerning Frigitemp. I told FVF's representatives that Frigitemp was in the process of an acquisition program to expand its business and establish a comprehensive and integrated interior installation business. I also told them about Frigitemp's plans to acquire a business and patents for temperature and humidity controlled systems for shipping. I also disclosed to them information concerning Frigitemp's sales and earnings. In particular, I told them that, although I expected a decline in sales and a loss for the first six months of 1969, on the basis of current backlog and the pending acquisitions, Frigitemp would have a substantial increase in sales and earnings for the second half of 1969, as well as for that entire year. In fact, Frigitemp's Semi-Annual Report for the period ended June 30, 1969 showed sales of $854,083 and a loss of $56,087 as compared to sales of $1,219,541 and a profit of $40,110 for the six months ended June 30, 1968. For the year ended December 31, 1969, Frigitemp's sales were $3,681,861 and it earned $337,999 as compared to sales of $3,025,240 and earnings of $106,579 for the year ended December 31, 1968.

8. After this meeting, I learned that Mr. Deutsch had a long standing personal and business relationship with the representatives of FVF and its investment advisor and that he had disclosed a great deal of material confi-

dential non-public information about Frigitemp to these persons prior to the meeting.

9. Following the meeting with the representatives of FVF and its investment advisor, I said to Mr. Deutsch that I was surprised that these persons were not making a more detailed analysis of Frigitemp and that their investigation appeared to be so cursory that I dispaired that Frigitemp would obtain the financing. Mr. Deutsch reassured me that FVF and its investment advisor had all they needed to know and not to worry about the investment being made by them. He stated that the purpose of the meeting was just to meet me.

10. Shortly thereafter, Mr. Silver went to Las Vegas to meet with Mr. Deutsch and representatives of FVF and its investment advisor. He reported to me that he, too, was astonished by the brief and superficial inquiry that the representatives of FVF and its investment advisor made and commented upon their anxiousness to finish their business quickly in order to get to the gaming tables. He also told me he disclosed to the representatives of FVF and its investment advisor the same information as I had disclosed to them.

11. In connection with the purchase by FVF of the $1 million debenture of Frigitemp in August 1969, the following detailed confidential information was furnished to its representatives and investment advisor:

(a) That Frigitemp was negotiating and subsequently entered into an agreement with Eric Rath and The Rath Company; that in connection there-

with, there was being developed certain prototype units of a temperature control and cooling device for standard containers to be used in shipment of various products; preliminary tests indicated that said units were of marketable quality, that Frigitemp would manufacture these refrigeration and temperature control units and would sell and lease the units through a subsidiary to be formed, with Frigitemp owning 85% thereof, and with said subsidiary acquiring the patents on the units owned by Eric Rath and The Rath Company.

(b) That Frigitemp was negotiating to acquire all of the outstanding stock of Labequipco, Inc. and R & H Metal Products Corp. and that the acquisitions of these businesses would substantially increase Frigitemp's sales and earnings.

(c) That the allocation of total sales and backlog accounted for by different aspects of Frigitemp's business had changed from that reflected in the January 15, 1969 prospectus and a larger percentage of both sales and backlog was now accounted for by hospital and environmental controlled equipment and units.

Attached hereto as Exhibit A is a copy of page 20 and the Third and Ninth schedules to the August 29, 1969 agreement under which the $1,000,000 debenture was sold by Frigitemp to FVF, setting forth the above information.

12. Our counsel, Feder & Kaszovitz, Esqs., prepared the documentation for the sale of the $1,000,000 debenture. They sent these documents consisting of a forty-nine page

agreement together with nine schedules, a thirteen page debenture and a nine page warrant to FVF and its counsel. Our counsel received virtually no comments on all of these papers and no legal "due diligence" investigation was made by FVF's counsel. Our counsel and FVF's counsel never even met. The debenture was issued on or about August 29, 1969. The closing, if it can be called that, took place at our counsel's office when a messenger delivered a check to Frigitemp's order for $1,000,000 and our counsel delivered the debenture. Our counsel remarked that this was a most remarkable transaction.

13. Prior to the purchase by FVF of the $1 million debenture from Frigitemp, I was told that the representatives of FVF and its investment advisor insisted, as a condition of the purchase by FVF, that shareholders of Frigitemp contribute 100,000 of their shares to the capital of the company. Because I believed the investment of $1 million in Frigitemp was for the best interests of Frigitemp, I, together with Gerald Ross, Henry Gutman and Leon Guttman, agreed to and did contribute 100,000 of our shares to the capital of Frigitemp as required by FVF and its investment advisor.

14. Neither I nor any other officer of Frigitemp was ever told by the representatives of any of the Funds or their investment advisor, nor did we know, that the Funds had purchased any shares of Common Stock of Frigitemp, until January, 1971. Prior to January, 1971, neither I nor any other officer of Frigitemp ever looked at its daily stock transfer records, much less took the trouble to calculate from each daily record, the number of Frigitemp

shares being acquired in the open market by any person. No officer of Frigitemp had ever before been connected with a public company. Management's interest was to make Frigitemp a profitable business for the benefit of all shareholders. My family and I firmly controlled Frigitemp through ownership of approximately 59% of its outstanding stock. I had no reason to care what Frigitemp's stock transfer sheets might have shown about accumulations of shares by others. To devote the substantial time and effort to review the daily transfer sheets, establish an account for a shareholder and to maintain a running balance of the number of shares such shareholders had purchased and sold never occurred to any of us as a worthwhile exercise, especially since out transfer agent would furnish to us a statement of the holdings of each shareholder once a year. In any case, no officer or employee even knew how to read and interpret stock transfer sheets.

15. In January, 1971, Joseph Heilbrun told me that Mr. Deutsch had told him that the Funds had cornered the market in Frigitemp stock in 1969 and 1970. When Mr. Heilbrun became associated with Frigitemp in 1971, he confirmed this fact when, for the first time, he removed Frigitemp's transfer sheets from the envelopes in which they had been delivered. Attached hereto as Exhibit B is a schedule of the Funds' purchases as reconstructed from Frigitemp's records. It shows that the Funds had purchased in excess of 140,000 shares. The total number of shares of Frigitemp available to be traded publicly during this period was not more than approximately 186,000 shares.

16. During the period from January 1969 to March 1970, the bid prices for Frigitemp's shares in the over-the-

counter market steadily rose from a low of approximately $9 per share to a high of $37 per share. I did not know then that this price increase was due to the purchases made by the Funds during this period. Beginning in March 1970, after the Funds ceased their purchases, Frigitemp's shares began a steady descent in price to $4 per share at the end of 1970. The daily price quotations for Frigitemp's shares in over-the-counter market in 1969 and 1970 are attached hereto as Exhibit C.

17. Following the purchase by FVF of Frigitemp's debenture, and in October or November 1971, Robert Anton arranged to meet with me at Frigitemp's offices in New York. He advised me that the Funds had sold out all of their shareholdings in Frigitemp; that he felt that Frigitemp was a good company and going places; but that Frigitemp was *persona non grata* with the Funds and its investment advisor because of the bad investments that they had made with and through Bernard Deutsch. I have since learned that the Funds acquired, through Mr. Deutsch, substantial positions in various highly speculative companies, all but one of which, I believe, are now defunct or unsuccessful. I do not know the extent to which the Funds invested in those companies and whether or not the Funds and Mr. Deutsch cornered the market for their shares. During the course of my discussions with Mr. Anton he never said anything concerning any losses which the Funds had incurred in the stock of Frigitemp, nor did he voice any complaints about it.

18. Frigitemp's dealings with FVF and its investment advisor were through Mr. Anton and Mr. John M. Butler.

Affidavit of Gerald Lee in Opposition to Defendants' Motion to Dismiss or to Transfer

In telephone conversations between us, I attempted to confirm that Frigitemp's debenture was for sale and determine whether it could be purchased by Frigitemp. After several telephone conversations betwe n us, a bargain was reached for the purchase of the debenture by Frigitemp for $550,000. Mr. Deutsch again acted as agent for FVF and arranged for the sale of the debenture, through an intermediary, to Frigitemp. The intermediary obtained a substantial profit in this transaction.

19. The Funds have not taken any action against Mr. Deutsch, the person whom the Funds now claim fraudulently induced them into making their investments in Frigitemp. Instead of suing Mr. Deutsch, they have instead chosen to look to place the responsibility for their losses away from themselves and Deutsch.

20. In a belated effort to blame Frigitemp for their losses, the Funds, in their moving papers, attempt to discredit the name and reputation of Frigitemp by reference to the prior proceedings before the Securities and Exchange Commission. These proceedings did not result in so much as an allegation that Frigitemp or its officers participated in any way in the open market purchases of the Funds. Although the Funds and their management were not indicted with Mr. Deutsch, it is apparent that the Funds actively participated in the wrongful manipulation of the price of the stock of Frigitemp. For the Funds to now posture themselves as innocent bystanders in a scheme to manipulate the price of the stock of Frigitemp is ludicrous. Armed with the information that Mr. Deutsch was furnishing them, together with the inside information which had

been made available to them by Frigitemp in connection with the private placement of the $1 million debenture, the Funds went rampant in their purchase of the Frigitemp shares and drove the price skyward. In 1970 the Funds realized approximately $130,000 in profits from the manipulation of Frigitemp's shares. However, they obviously held on too long and did not sell the bulk of their holdings until 1971 when the entire stock market had declined. By dumping all of their remaining stock, the Funds accelerated the downward price movement. Having been victims of their own greed as a result of the manipulation they engaged in with Mr. Deutsch, the Funds now seek, as an afterthought, to recoup their losses from Frigitemp.

21. I respectfully submit that the complaint filed herein against the Funds, its investment advisor and its officers states valid claims on behalf of Frigitemp of market manipulation and on behalf of the individual plaintiffs who were wrongfully induced to contribute 100,000 shares to Frigitemp in 1969, without knowledge or information concerning the accumulation of Frigitemp's shares by the Funds having been disclosed to them. Accordingly, I respectfully request that defendants' motion be denied in all respects.

/s/ Gerald Lee
GERALD LEE

(Sworn to by Gerald Lee on May 15, 1974.)

Exhibit A to Lee Affidavit in Opposition to Defendants' Motion to Dismiss or to Transfer

EXCERPTS FROM AUGUST 29, 1969 DEBENTURE AGREEMENT CONTAINING CONFIDENTIAL INFORMATION.

signment, service or other intangible asset, or for fees or expenses in connection with the promotion or organization of the Company, or of any of the Scheduled Subsidiaries, except as set forth in the Schedules to this Agreement.

(w) Projected Acquisitions.

(i) The Company has entered into an agreement with Eric [illegible] and The Rath Company pursuant to which, if certain prototype units of a temperature control and cooling device for standard "containers" used in transportation are found to be as effective as predicted, and if certain other conditions are met, The Company will incorporate a new subsidiary corporation to sell and lease such refrigeration and temperature control units, which units are to be manufactured by The Company. The Company will own eighty five per cent (85%) of such new subsidiary and The Company is committed to provide the new subsidiary with up to Five Hundred Thousand and 00/100 ($500,000) Dollars for operating funds to be advanced as the capital requirements of the new subsidiary dictate. The units manufactured by

The Company are to be sold to the new subsidiary at a mark-up of 30% over the Company's cost of manufacture. The new subsidiary is to assign certain patents relating to the unit to the new subsidiary. The Company will issue to Eric Rath, upon the leasing of five hundred of the units, six thousand (6,000) shares of the stock.

(ii) The Company is presently negotiating agreements to acquire all of the outstanding stock of Labequipco, Inc. and of R&H Metal Products Corp., in exchange for up to 70,000 shares of the Stock, with additional shares of the stock (not exceeding 70,000 additional shares) issuable in proportion to increased earnings by Labequipco, Inc. and/or by R&H Metal Products Corp.

(x) Corporate Action: Company Shares. The Company, by appropriate and all required corporate action, has duly authorized the terms and provisions of this Agreement. The Stock is not subject to pre-emptive rights of any stockholder, and, when issued in accordance with the terms and provisions of this Agreement the Debenture or the Warrants will be validly issued, fully paid and non-assessable.

THIRD SCHEDULE

Business of Frigitemp Corp. and Subsidiaries

See information contained in Frigitemp Corp.'s prospectus dated January 15, 1969, under the headings "Business" and "the Company", for a description of the business now being conducted by Frigitemp. There has been no change in the nature of the business conducted by Frigitemp although the allocation of total Company sales and backlog accounted for by the different aspects of the Company's business has changed and a larger percentage of both sales and backlog is now accounted for by "hospital and environmental controlled equipment and units".

The agreement with Eric Rath and the Rath Company, dated July 28, 1969 and referred to in the Agreement to which this Schedule is annexed, may result in the Company and a newly formed subsidiary manufacturing, selling and leasing units for refrigeration and controlling temperature and moisture in standardized containers uded in the shipment of different products.

If negotiations now being conducted for the purchase of R & H Metal Products Corp. and/or Lubequipco, Inc. are concluded, such newly acquired subsidiaries will be engaged in different aspects of the lines now engaged by the Company.

Also, the Company and its subsidiaries are parties to union agreements with Local #719, affiliated with the International Production, Service and Sales Employees Union, covering most of the Company's employees.

NINTH SCHEDULE

Patents

None. However, certain patents may be acquired by a subsidiary to be formed, all under the terms of the agreement between the Company and Eric Rath and The Rath Company, described in the Agreement to which this schedule is annexed.

Exhibit B to Lee Affidavit in Opposition to Defendants' Motion to Dismiss or to Transfer

SCHEDULE OF THE FUNDS PURCHASES OF FRIGIDAIRE STOCK.

Frigitemp Corp.
Stock Transfer Records

Purchases by the Funds

Dates	Amounts	Dates	Amounts	Dates	Amounts
1969					
4/13/69	1,000	7/1	1,000	11/6	200
4/17	500	7/2	100	11/7	400
4/21	500	7/7	1,100	11/15	400
4/22	1,100	7/10	1,200	11/20	1,600
4/23	3,200	7/11	300	11/24	300
4/25	1,000	7/15	500	12/4 to	
4/28	800	7/18	100	12/10	700
4/30	1,000	7/21	3,000	12/15	1,000
5/6	3,000	7/22	300		
5/7	6,100	7/24	300	1970	
5/8	200	7/29	800		
5/9	1,000	7/30	1,000	1/15	400
5/13	1,300	8/1	500	1/20	200
5/15	1,600	8/4	1,400	1/22	11,000
5/16	1,300	8/5	200	1/23	200
5/19	5,800	8/6	600	1/26	100
5/20	4/600	8/7	500	1/24	100
5/21	2,100	8/8	600	1/30	200
5/22	1,500	8/11	2,500	2/6	1,400
5/23	3,500	8/14	800	2/27	200
5/27	4,500	8/15	400	3/4	100
5/28	1,900	8/18	2,500	3/5	900
6/2	3,700	8/20	1,400	3/23	700
6/3	1,000	8/22	2,500	4/1	800
6/4	900	8/25	2,000	4/9	500
6/5	1,200	8/28	1,500	4/16	1,000
6/6	1,500	8/29	2,200	5/19	1,200
6/9	300	9/2	200		
6/10	400	9/3	1,200		
6/11	1,300	9/5	600		
6/12	400	9/10	500		
6/16	4,500	9/16	2,600		
6/17	600	9/17	1,100		
6/18	700	9/19	200		
6/19	800	10/29	3,400		
6/20	1,000	10/30	1,300		
6/25	1,000	11/3	1,300		
6/30	2,500	11/5	4,600		

Exhibit C to Lee Affidavit in Opposition to Defendants' Motion to Dismiss or to Transfer

DAILY PRICE QUOTATIONS FOR FRIGITEMP'S COMMON STOCK IN 1969 AND 1970.

NATIONAL QUOTATION BUREAU
INCORPORATED
116 NASSAU STREET
NEW YORK, N. Y. 10038
212 – 349-1800

CHICAGO
SAN FRANCISCO

BOSTON
LOS ANGELES

151a

AUGUST 23, 1972

A REPORT

QUOTATIONS _ FROM THE NATIONAL DAILY QUOTATION SERVICE - EASTERN SECTION

ISSUE - FRIGITEMP CORPORATION (NEW YORK) COMMON STOCK

	BID PRICES		ASKED PRICES	
1969	HIGH	LOW	HIGH	LOW
JANUARY I6 (FIRST AVAILABLE)	9	9	II	II
I7	I2	II	I3 I/2	I2 I/2
20	I2	II	I4	I2 I/2
2I	I2	I0 I/2	I3	I2
22	II I/2	I0 I/2	I3	I2
23	I2	I0 I/2	I3	I2
24	II 3/4	I0 I/2	I2 3/4	I2 I/4
27	I2	II I/2	I3	I2 I/2
28	I3	I2	I3 3/4	I3
29	I4	I2 3/4	I5	I3 3/4
30	I3 I/2	I3 I/2	I4 I/2	I4
3I	I4	I3	I4 I/2	I4
FEBRUARY 3	I4 I/4	I3 I/4	I5	I4 I/4
4	I4 I/4	I3 I/2	I5	I4 I/2
5	I4 I/2	I3 3/4	I5	I4 3/4
6	I4 I/2	I4 I/4	I5 I/4	I5

1969

FEBRUARY	7	I4 3/4	I4 I/4	I5 I/2	I5
	I0 - STOCK EXCHANGES CLOSED				
	II	I5	I4 I/4	I5 3/4	I5
	I2	I5 3/4	I5 I/4	I6 I/2	I6
	I3	I5 I/2	I5	I6 I/2	I5 3/4
	I4	I5 I/4	I5	I6	I5 3/4
	I7	I5 I/4	I4 I/2	I5 3/4	I5 I/4
	I8	I5	I4 3/4	I5 3/4	I5 I/2
	I9	I4 I/2	I3 3/4	I5 I/2	I4 3/4
	20	I4 I/2	I4	I5 I/2	I4 3/4
	24	I4 I/2	I4	I5 I/4	I5
	25	I4 I/2	I3 3/4	I5 I/2	I4 3/4
	26	I4	I3 3/4	I5	I4 I/4
	27	I4 I/4	I3 I/2	I5	I4 I/2
	28	I4 I/4	I3	I5	I4
MARCH	3	I3 I/4	I3	I4 I/4	I3 3/4
	4	I3 I/2	I2 3/4	I4 I/4	I3 3/4
	5	I4	I2 3/4	I5	I3 I/2
	6	I3 I/2	I2 I/2	I4 I/2	I3 I/2
	7	I3 I/4	I2 I/2	I4	I3 I/2
	I0	I3 I/4	I2 I/2	I4	I3 I/2
	II	I3 I/2	I2 I/2	I4	I3 I/2
	I2	I3 I/4	I3	I4	I4
	I3	I3 I/4	I3	I4 I/4	I4

(3)

1969

MARCH	I4	I3	I2 3/4	I4	I3 I/2
	I7	I3	I2 I/2	I4	I3 I/2
	I8	I2 3/4	I2 I/2	I3 3/4	I3 I/2
	I9	I4 I/4	I2 I/2	I5 I/4	I3 I/2
	20	I4 I/2	I4 I/4	I5 I/2	I5
	2I	I5 I/2	I5	I6 I/2	I6
	24	I6 I/2	I4 I/2	I7 I/2	I5 I/2
	25	I6 I/4	I6	I7	I7
	26	I6 I/2	I6	I7 I/2	I7
	27	I6 I/2	I6	I7 I/4	I6
	28	I6 I/2	I6 I/4	I7 I/2	I7
APRIL	I	I6 I/4	I5 3/4	I6 3/4	I6 3/4
	2	I5 3/4	I5 I/4	I6 3/4	I6 I/4
	3	I6	I5 3/4	I6 3/4	I6 3/4
	7	I6	I5 3/4	I7	I6 I/2
	8	I5 3/4	I5 3/4	I6 I/2	I6 I/2
	9	I6 I/4	I6 I/4	I7 I/4	I7
	I0	I6 I/2	I6 I/4	I7 I/4	I7
	II	I7 3/4	I7 I/8	I8 I/2	I8 I/4
	I4	I7 3/4	I7 I/2	I8 I/2	I8 I/4
	I5	I7 I/2	I7	I8 I/4	I8
	I6	I7 I/2	I7 I/4	I8 I/4	I8
	I7	I7 I/4	I7 I/4	I8 I/4	I8
	I8	I7 I/4	I7	I8	I7 3/4

1969

APRIL	21	17 1/4	16 1/2	18	17 1/2
	22	17 1/4	17	18	17 3/4
	23	17 1/4	17	17 3/4	17 3/4
	24	17	17	17 3/4	17 3/4
	25	16 3/4	16 1/4	17 3/4	16 3/4
	28	17	16 1/2	18	17 1/4
	29	17 3/4	17 1/4	18 1/2	18
	30	18	17 3/4	19 1/2	18 1/2
MAY	1	17 3/4	17 3/4	18 3/4	18 1,
	2	18	17 3/4	19	18 3/4
	5	19	17 3/4	20	18 3/4
	6	20 1/2	19 1/2	22	20 1/2
	7	21 3/4	21	22 1/2	22 1/2
	8	22 3/4	22 1/2	23 3/4	23 1/2
	9	22 3/4	22 1/2	23 3/4	23 1/4
	12	22 1/2	22	23 1/2	23
	13	22 1/2	22	23 1/4	23 1/4
	14	22 1/2	22 1/2	23 1/4	23 1/4
	15	22 1/2	22 1/2	23 1/4	23 1/4
	16	22 3/4	22 1/2	23 1/2	23 1/4
	19	22 3/4	22 1/2	23 3/4	23 1/2
	20	23 1/2	23	23 3/4	23 1/2
	21	23	22 1/2	23 3/4	23 3/4
	22	23	22 1/2	23 3/4	23 1/2
	23	23	23	24	23 3/4
	26	23	23	23 3/4	23 3/4
	27	23 1/2	23	24 1/2	23 3/4

1969					
JUNE	28	23 I/2	23 I/4	24 I/4	24
	29	23 I/2	23 I/4	24 I/2	24 I/4
JUNE	2	23 I/2	23 I/4	24 I/4	24 I/4
	3	23 I/2	23 I/ 4	24 I/4	24
	4	23 I/4	23	24	24
	5	23	22 I/2	23 3/4	23 I/2
	6	23	22 I/2	24	23 I/2
	9	22 3/4	22 I/2	23 3/4	23 I/2
	I0	22 3/4	22 I/2	23 3/4	23 I/2
	II	22 3/4	22 I/2	23 3/4	23 I/2
	I2	23	22 I/2	23 3/4	23 I/2
	I3	23	22 I/4	23 3/4	23 I/4
	I6	22 3/4	22	23 3/4	23
	I7	22 3/4	22 I/4	23 3/4	23 I/4
	I8	22 3/4	2I I/4	23 3/4	22 I/4
	I9	22 3/4	2I 3/4	23 3/4	22 3/4
	20	22 I/2	22	23 I/2	23
	23	22 I/4	2I 3/4	23 I/4	22 3/4
	24	22	2I 3/4	23	22 I/2
	25	22	2I 3/4	23	22 I/4
	26	22	2I 3/4	23	22 I/4
	27	22	2I 3/4	23	22 I/4
	30	22	2[illegible]/4	23	22 I/4
JULY	I	22	2I 3/4	23	22 I/4
	2	22	2I I/ 4	23	22 I/4
	3	22	2I I/2	23	22 I/2
	7	22	2I I/2	23	22 I/4
	8	22	2I I/2	23	22 I/4

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1969

JULY	9	22	21 1/2	23	22 1/2
	10	22	21 3/ 4	23	22 3/4
	11	22	21 3/4	23	22 1/2
	14	22	21 3/4	23	22 1/2
	15	22	21 1/2	23	22 1/4
	16	22	21 1/2	23	22 1/2
	17	22	21 1/2	23	22 1/2
	18	22	21 1/2	23	22 1/2
	22	22	21 1/2	23	22 1/4
	23	22	21 1/2	23	22 1/4
	24	22	21	23	21 1/4
	25	21 1/2	21	22 1/2	213/4
	28	21 1/2	21	22 1/2	21 3/4
	29	21	20 3/4	22	21 1/2
	30	20 3/4	20 1/2	21 1/2	21 1/2
	31	20 3/4	20 1/2	21 1/2	21 1/2
AUGUST	1	20 3/4	20 1/2	21 1/2	21 1/2
	4	20 3/4	20 1/2	21 1/2	21 1/2
	5	20	19 1/2	21	20 1/2
	6	20	19 1/2	21	20 1/2
	7	20	20	21	20 3/4
	8	20	19 1/2	20 3/4	20 1/2
	11	19 1/2	19	20 1/2	20
	12	19 1/2	19	20 1/2	20
	13	19 1/2	19	20 1/2	20
	14	19 1/2	19	20 1/2	20
	15	19 1/2	19	20 1/2	20
	18	19 1/2	19	20 1/2	20

1969

AUGUST	I9	I9 I/2	I9	20 I/2	20
	20	I9 I/2	I9	20 I/2	20
	2I	I9 I/2	I9	20 I/2	20
	22	I9 I/2	I9	20 I/2	20
	22	I9 I/2	I9	20 I/2	20
	25	20	I9 I/2	2I	20 I/2
	26	20	I9 I/2	2I	20 I/2
	27	20	I9 I/2	2I	20 I/2
	28	I9 I/2	I9	20 I/2	20
	29	I9 I/2	I9 I/4	20 I/2	20 I/4
SEPT.	2	20 I/2	I9 I/2	2I I/2	20 I/2
	3	2I	20 I/2	22	2I I/2
	4	2I I/4	20 3/4	22 I/4	2I 3/4
	5	22	2I I/2	23	22 I/2
	8	22	2I I/2	23	22 I/2
	9	22 I/2	2I 3/4	23 I/2	22 3/4
	I0	23	23	24	24
	II	24	23	25	24
	I2	24	23 I/4	25	24 I/4
	I5	23 I/4	23	24 I/2	24 I/4
	I6	23 I/2	23	24 I/2	24 I/4
	I7	23 I/2	23	24 I/2	24 I/4
	I8	23 3/4	23	24 3/4	24 I/2
	I9	23 3/4	23	24 3/4	24 I/2
	22	23 3/4	23 I/2	24 3/4	24 I/2
	23	23 3/4	23 I/2	24 3/4	24 I/2
	24	24	23 I/2	25	24 I/2
	25	24 I/4	23 I/2	25 I/4	24 I/2

1969				
SEPT. 26	24	23 3/4	25	24 3/4
29	24	23 3/4	25	24 3/4
30	24 I/4	24	25 I/4	25
OCTOBER I	24 I/4	24	25 I/4	25
2	24 I/4	24	25 I/4	25
3	25	24 I/2	26	25 I/2
6	25	24 3/4	26	25 3/4
7	25	25	26	26
8	25	25	26	26
9	25	25	26	26
I0	25	24 I/2	26	25 I/2
I3	25	24 I/2	26	25 I/2
I4	25	24 I/2	26	25 I/2
I5	24 3/4	24 I/2	25 3/4	25 I/2
I6	25	24 I/2	26	25 I/2
I7	25	24 I/2	26	25 I/2
20	25	25	26	26
2I	25	24	26	25
22	25	24 3/4	26	25 3/4
23	25	24 3/4	26	25 3/4
24	25	24 3/4	26	25 3/4
27	26 I/4	25	27 I/4	26
28	26 I/4	25	27 I/4	26
29	26 I/2	25	27 I/2	26
30	25 3/4	25	26 3/4	26
3I	25 3/4	25	27	26 I/4
NOVEMBER 3	25 I/2	25	27	26 I/4
4	25 I/2	25 I/4	26 I/2	26 I/4

1969				
NOVEMBER 5	25 I/2	25	27	26 I/4
6	25 I/2	25	26 I/2	26
7	25 I/ 4	25	26 I/4	26
I0	25	24 I/2	26	25 I/2
II	25	24 I/2	26 I/2	25 I/2
I2	24 3/4	24	25 3/4	25
I3	24 I/2	24	25 I/2	25
I4	25	24 I/4	26	25 I/4
I7	25	24 I/4	26	25 I/4
I8	25	24 I/2	26	25 I/2
I9	25	24 I/2	26	25 I/2
20	25	24	26	25
2I	24	23 I/2	25	25
24	24 I/2	23 I/2	26	24 I/2
25	24 I/2	23 I/2	25 I/2	24 I/2
26	24 I/2	23	25 I/2	24
28	24	23	25	24
DECEMBER I	23 I/2	23	24 I/2	24
2	23 I/2	23	25	24
3	23	22 I/2	24	23 I/2
4	22 I/4	22	25	23 I/4
5	22	22	25	23
8	2I	2I	23	22 I/2
9	23 3/4	2I	25	23
I0	23 3/4	2I	25	23
II	23 3/ 4	22 I/2	25	24 I/2
I2	23 I/2	22 I/2	25	24 I/2

1969

DECEMBER	I5	23 I/4	22 I/2	25	24 I/4
	I6	23 I/2	22 I/2	25	24 I/2
	I7	24	22 I/2	26	24 I/2
	I8	25	25	27	27
	I9	25 3/4	25	27	27
	22	25 3/4	2 5	27	27
	23	25	25	27	27
	24	25	25	27	27
	26	25	25	27	27
	29	26	25	28	27
	30	25	25	27	27
	3I	26	25	28	27

1970

JANUARY	2	27	26	29	28
	5	27	26	29	28
	6	27	26	29	28
	7	28	27	30	29
	8	28 I/4	27	30	29
	9	28	27	30	29
	I2	28	27	30	29
	I3	28 I/2	28	30 I/2	30

1970

JANUARY	I4	28 I/2	27	30 I/2	29
	I5	29	28	30 I/2	29 I/2
	I6	28	28	30	30
	I9	28	28	30	30
	20	28	28	30	30
	2I	28	27 I/2	30	29 I/2
	22	28	27 I/2	30	29 I/2
	23	28	27 I/2	30	29 I/4
	24	28	27 I/2	30	29 I/2
	27	28 I/2	28	30 I/2	30
	28	29	28	3I	30
	29	29	28	3I	30
	30	29	28	3I	30
FEBRUARY	2	29	28	3I	30
	3	28 I/2	28	30 I/2	30
	4	29	28	3I	30
	5	29	28	3I	30
	6	28	28	30	30
	9	29	28	3I	30
	I0	29	28	3I	30
	II	29	28	3I	30
	I2	29	29	3I	3I
	I3	29	29	3I	3I
	I6	29 I/2	29	3I I/2	3I
	I7	29	29	3I	3I
	I8	30 I/2	30	32 I/2	32
	I9	30 I/2	30	32 I/2	32
	20	30 I/2	30	32 I/2	32

I970					
FEBRUARY	24	30 I/2	30	32 I/2	32
	25	30 I/2	30	32 I/2	32
	26	33	30	36	32
	27	34	33	37	36
MARCH	2	34	34	37	36
	3	34	33	36	36
	4	35	34	38	37
	5	36	35	39	38
	6	37	36	40	39
	9	37	36	40	39
	I0	37	36	40	39
	II	37	37	40	40
	I2	37	36	40	39
	I3	37	35	40	38
	I6	37	35	40	38
	I7	37	34	40	38
	I8	37	36	40	38
	I9	37	35	40	38
	20	37	35	40	37
	23	37	35	40	39
	24	36	34	40	36
	25	36	34	40	36
	26	36	34	40	36
	30	36	33	40	36
	3I	36	33 I/2	40	36 I/2
APRIL	I	34	33	37	36

1970					
APRIL	2	34	29	37	33
	3	3I	30	36	34
	6	32	29	36	33
	7	30	28	34	32
	8 - NOT AVAILABLE				
	9	26	25	30	30
	I0	26	25	30	27
	I3	24	24	27	27
	I4	24	23	27	26
	I5	26	26	30	30
	I6	27	24	3I	30
	I7	28	27	33	3I
	20	28	27	33	3I
	2I	27	26	3I	30
	22	27	26	3I	30
	23	24	24	28	28
	24	22	22	26	26
	27	22	22	26	26
	28	22	22	26	26
	29	22	22	26	26
	30	20	20	25	24
MAY	I	20	20	25	24
	4	I8	I8	22	22
	5	I8	I8	22	22
	6	I8	U8	22	2I
	7	I8	I8	22	22
	8	I8	I8	22	22

(I4)

1970 MAY	II	I8	I8	22	22
	I2	I8	I8	22	22
	I3	I7	I7	2I	2I
	I4	I7	I7	2I	2I
	I5	I5	I5	I9	I9
	I8	I3	I3	I7	I7
	I9	I3	I3	I7	I7
	20	I3	I3	I7	I7
	2I	I3	I3	I7	I7
	22	I5	I5	I7	I7
	25	I3	I3	I7	I7
	26	I3	I3	I7	I7
	27 - NOT QUOTED				
	28	I3	I3	I7	I7
	29	I3	I3	I6	I6
JUNE	I	I3	I3	I6	I6
	2	I3	I3	I7	I7
	3	I2	I2	I7	I7
	4 - NOT QUOTED				
	5	I3	I3	I6	I6
	8	I3	I3	I6	I6
	9	I3	I3	I6	I6
	I0	I3	I3	I6	I6
	II	I3	I3	I6	I6
	I2	I3	I3	I6	I6
	I5	I3	I3	I7	I7
	I6	I3	I3	I7	I6
	I7	I3	I3	I7	I6

1970

JUNE	I8	I3 I/2	I3	I7	I5 I/2
	I9	I3 I/2	I3	I7	I5 I/2
	22	I3	I3	I6	I5
	23	I3	I3	I7	I5
	24	I3	I3	I7	I5
	25	I3	I2 I/2	I7	I4 I/2
	26	I3	I2	I6	I5
	29	I3	I2	I6	I4
	30	I3	I3	I6	I5
JULY	I	I3	I2 I/2	I6	I4 I/2
	2	I3	I3	I6	I6
	6	I2	I2	I5	I5
	7	I2	I2	[illegible]	I5
	8	I2	I2	I6	I6
	9	II	II	I5	I5
	I0	II	II	I5	I5
	I3	II	I0	I5	I4
	I4	II	I0	I5	I4
	I5	II	II	I4	I4
	I6	II	I0	I5	I3
	I7	I0	I0	I5	I3
	20	I0	I0	I5	I3
	2I	I0	I0	I5	I5
	22	I0	I0	I5	I5
	23	8	8	I0	I0
	24	8	8	I0	I0

I970					
JULY	27	8	8	I0	I0
	28	8	8	I0	I0
	29	8	8	I0	I0
	30	8	8	I0	I0
	3I	8	8	I0	I0
AUGUST	3	8	8	I0	I0
	4	8	8	I0	I0
	5	8	7	I0	I0
	6	8	7	I0	9
	7	8	7	I0	9
	I0	7	7	9	9
	II	7 I/2	7 I/2	9 I/2	9 I/2
	I2	II	II	I3	I3
	I3	I2	I2	I4	I4
	I4	I2	I2	I4	I4
	I7	II	II	I3	I3
	I8	I0 I/2	I0 I/2	I2 I/2	I2 I/2
	I9	9	9	II	II
	20	8 I/2	7	9 I/2	9
	2I	8	8	9	9
	24	8	8	II	I0
	25	9	9	II	I0 I/2
	26	9	9	II	I0 I/2
	27	9	9	II	I0 I/2
	28	9	9	II	I0 I/2
	3I	9 I/2	9	II	II
SEPT.	I	9 I/2	9	II	II
	2	9	9	II	II

1970					
SEPT.	3	9	9	II	II
	4	9 I/2	9	II	II
	8	9 I/2	9	II	I0
	9	9	9	II	II
	I0	9	9	II	II
	II	I0 I/2	9	I2 I/2	II
	I4	I0	9 I/2	I2	II
	I5	9 I/2	9	II I/2	II
	I6	9 I/2	9 I/2	II I/2	II
	I7	9 I/2	9 I/2	II I/2	II
	I8	9 I/2	9 I/2	II I/2	II
	2I	I0	9 I/2	II I/2	II
	22	9 I/2	9 I/2	II I/2	II
	23	I0	9 I/2	I2	II I/2
	24	I0	9 I/2	I2	II I/2
	25	I0	I0	I2	II I/2
	28	I0	9 I/2	I2	II I/2
	29	I0 I/2	9 I/2	I2 I/2	II I/2
	30	I0	I0	I2	II I/2
OCTOBER	I	I0	I0	I2	II I/2
	2	I0	I0	I2	II I/2
	5	I0	I0	I2	II I/2
	6	I0	I0	I2	II I/2
	7	II	I0 I/ 2	I3	I2 I/2
	8	II	I0 I/2	I3	I2 I/2
	9	II	II	I3	I2 I/2

1970

OCTOBER I2	II	II	I3	I2 I/2
I3	II I/2	II	I3	I2 I/2
I4	II I/2	II	I3	I3
I5	II	II	I3	I2 I/2
I6	II	II	I3	I2 I/2
I9	II	II	I3	I2 I/2
20	II	II	I3	I2 I/2
2I	II	II	I3	I2 I/2
22	II	II	I3	I2 I/2
23	II	II	I2 I/2	I2
26	II	II	I3	I2 I/2
27	II	II	I3	I2 I/2
28	II	II	I3	I2 I/2
29	II	I0 I/2	I3	I2
30	II	I0	I2	I2
NOVEMBER 2	II	I0	I2 I/2	I2
3	I0	I0	I2	I2
4	I0	I0	I2	I2
5	I0	I0	I2	I2
6	8 I/2	8 I/2	I0 I/2	I0 I/2
9	8 I/2	8	I0 I/2	I0
I0	7 I/2	7 I/2	9 I/2	9 I/2
II	7 I/2	7 I/2	9 I/2	9 I/2
I2	7 I/2	7 I/2	9 I/2	9 I/2
I3	7 I/2	7 I/2	9 I/2	9 I/2
I6	7 I/2	7 I/2	9 I/2	9 I/2
I7	8	7 I/2	I0	9 I/2
I8	7 I/2	7 I/2	9 I/2	9 I/2

I970				
NOVEMBER I9	7 I/2	7 I/2	9 I/2	9 I/2
20	7 I/2	7 I/2	9 I/2	9
23	7 I/2	7 I/2	9 I/2	9 I/2
24	7 I/2	7	9 I/2	9
25	7 I/2	7	9 I/2	9
27	7 I/2	7	9 I/2	9
30	7 I/2	7	9 I/2	9
DECEMBER I	6	6	8	8
2	6	6	8	8
3	6	5 I/2	8	7 I/2
4	6	6	8	7I/2
7	6	6	8	7 I/2
8	6	5 I/2	8	7
9	6	5 I/2	8	7
I0	6	5	8	6 I/2
II	6	6	8	8
I4	6	5	8	6 I/2
I5	6	5	8	6 I/2
I6	6	5 I/2	8	7
I7	6	5 I/2	8	7
I8	4 I/2	4 I/2	6	6
2I	4 I/2	4 I/2	6	6
22	4 I/2	3 I/2	6	5
23	4 I/2	3 I/2	6	5
24	3 3/4	3 I/2	5	5

1970				
DECEMBER 28	4	3 3/4	5 I/2	4 3/4
29	4	3 3/4	5 I/2	5
30	4	3 I/2	5I/2	5
3I	4	3 I/2	5 I/2	5

NOTE - THE ABOVE QUOTATIONS REPRESENT PRICES BETWEEN DEALERS AND DO NOT INCLUDE RETAIL MARK-UP, MARK-DOWN OR COMMISSION. THEY DO NOT REPRESENT ACTUAL TRANSACTIONS, AND HAVE NOT BEEN ADJUSTED FOR STOCK DIVIDENDS OR SPLITS.

NATIONAL QUOTATION BUREAU, INC.

J. Barry Long

J. BARRY LONG
Assistant Vice-President

JBL:j

Affidavit of Lloyd D. Feld in Opposition to Defendants' Motion to Dismiss or to Transfer

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

LLOYD D. FELD, being duly sworn, deposes and says:

1. I am an attorney-at-law and a member of the firm of Blackman Lefrak Myerson & Feld, counsel to the plaintiffs in this action. I submit this affidavit in opposition to the motion of the defendants to dismiss the complaint or to transfer the action to the District of Colorado.

2. In January 1974, Gerald Lee, the President of Frigitemp Corp. ("Frigitemp"), called my firm and told us that Alan Steinberg, an attorney for Financial Dynamics Fund, Inc., Financial Industrial Fund, Inc., and Financial Venture Fund, Inc. (the "Funds"), had requested a meeting with him to obtain information from him concerning Frigitemp's dealings with the Funds. David Myerson, a member of this firm, then called Mr. Steinberg and told him that if he wished any information concerning Frigitemp's dealings with the Funds, he should get in touch with me.

3. I thereafter met with Mr. Steinberg at which time he told me that he had been retained to make recommendations to the Funds concerning the conduct of the Funds' former

management and the management of their investment advisor, Financial Programs, Inc. He stated that he wished to obtain information concerning the transaction whereby in April 1972 Frigitemp repurchased its $1,000,000 principal amount, 5% Convertible Subordinated Debenture, which it had sold to Financial Venture Fund, Inc. ("FVF") in 1969. Mr. Steinberg assured me that none of the information furnished to him would ever be used to the detriment of my clients.

4. In the course of our early meetings, Mr. Steinberg told me that FVF sold Frigitemp's $1,000,000 Debenture back to it at a loss of $500,000 because the interest rate on the Debenture of 5½% was very low compared to prevailing rates in April 1972. Mr. Steinberg also told me that the Funds had lost a total of approximately $1,500,000 in trading the shares of Frigitemp and that the Funds' shares of Frigitemp had been sold as a result of a managerial decision to indiscriminately dispose of all securities which had been recommended by Bernard Deutsch. He also stated that if the Funds were to assert any claims against Frigitemp he was prepared to recommend to the Funds that they settle such claims for not more than $300,000, because he was of the opinion that there were many defects in the Funds' claims. He also told me that the Funds and Financial Programs, Inc. were the subject of an investigation by the Securities and Exchange Commission relating to their securities dealings. I told Mr. Steinberg that I, too, felt the Funds' conduct in connection with these transactions was by no means above reproach since their relationship and activities with Bernard Deutsch raised many questions and since I had reason to believe payoffs had been made to an officer of Financial Programs, Inc. to induce him to purchase

Frigitemp shares for the Funds. I also stated to him that I, too, would recommend that my clients consider settling the Funds' claims. My reasons for this were as follows:

(a) Frigitemp and its officers were defendants in an alleged class action of which purported class the Funds, by reason of the size of their holdings of Frigitemp shares, had sustained the greatest portion of the loss. I believed that settling with the Funds would result in reducing to a small amount the size of the claims of the remainder of the purported class.

(b) Frigitemp was anxious to obtain additional financing. Litigation between it and the Funds would require explanations to prospective investors and hang as a cloud over sensitive business dealings.

(c) Frigitemp and its officers had spent eight months involved in a proceeding with the Securities and Exchange Commission which related to the period during which the Funds purchased their shares of Frigitemp. Frigitemp's management preferred to be free of further litigation involving its difficulties in 1969 in order to devote their full time to its business affairs.

5. Because of the foregoing, I suggested to Mr. Steinberg that a possible means of settling with the Funds would be to permit them to make an investment in Frigitemp on favorable terms. Mr. Steinberg said that he thought this was a worthwhile and creative suggestion.

6. I reported my discussion with Mr. Steinberg to Frigitemp's management, recommended that they cooperate with him since he had assured me that their cooperation

would not be to their detriment, and further recommended settling with the Funds for the reasons set forth above. I told them I thought that a settlement could be made for less than $300,000 and that it might be accomplished as part of a transaction involving an investment by the Funds in Frigitemp securities. Frigitemp's management concurred in my recommendations and instructed me to pursue a settlement with the Funds.

7. At my next meeting with Mr. Steinberg, he informed me that he had just discovered that FVF had another claim against Frigitemp arising out of the purchase by it of Frigitemp's Debenture referred to above. He told me that FVF had lost 500,000 on this investment. He said he believed he had a very strong case on this claim, and would not be willing to settle it for less than $450,000. In addition, he now firmly demanded to settle the Funds' claims arising out of their losses in trading Frigitemp's shares for $300,000. Until this time, there had never been any discussion of a claim against Frigitemp based upon this transaction and I began to think myself very gullible in my dealings with Mr. Steinberg since his settlement demands had suddenly firmed and escalated. Nevertheless, I was prepared to give him the benefit of any doubt. However, I told Mr. Steinberg that a settlement of the size he now proposed was out of the question. I told him that the conduct of FVF and its investment advisor in purchasing Frigitemp's Debenture was reckless and irresponsible, and I had concluded there were unlawful ulterior motives involving this investment. I also told him that I regarded the conduct of the Funds in cornering the market for Frigitemp shares as tantamount to a manipulation. I cited to him specific instances of payoffs made and other considerations given to an officer

of Financial Programs, Inc., to induce him to purchase Frigitemp securities. Mr. Steinberg replied that he was satisfied that the Funds had adequately investigated their investments in Frigitemp and that the personnel of its investment advisor had acted properly.

8. Subsequently, Mr. Steinberg told me that the Funds would not make an investment in Frigitemp and proposed to me a settlement which he regarded as fair. Essentially, this proposal involved the issuance by Frigitemp of debt and equity securities to the Funds. I told him that such a settlement might involve tax problems for the Funds and substantial charges to the current earnings of Frigitemp, and in any case, the amount of the settlement was out of line in view of the conduct of the Funds.

9. At or about this time I told Mr. Steinberg that I had reviewed the filings of FVF with the Securities and Exchange Commission and had discovered evidence that it did not even know Frigitemp's principal business, and that FVF's portfolio indicated highly questionable transactions with numerous companies evidently recommended to FVF by Bernard Deutsch. Mr. Steinberg continued to insist that the Funds had exercised due diligence in its purchase of shares and FVF's purchase of Frigitemp's Debenture and that the Funds and their investment advisor had acted properly and, in any event, the Funds would not be held responsible for the misconduct of their investment advisor. I told Mr. Steinberg I thought his position was untenable. He insisted that the settlement he had proposed was fair and I again rejected his proposal.

Affidavit of Lloyd D. Feld in Opposition to Defendants' Motion to Dismiss or to Transfer

10. Meanwhile, I had reported to my clients that the settlement figure which had initially been requested at not more than $300,000 had now been raised to $750,000 and that Mr. Steinberg appeared to be intractable.

11. My clients then requested that I arrange to give them an opportunity to meet directly with the Funds to attempt to persuade them to invest in Frigitemp as part of a settlement. I called Mr. Steinberg to arrange this meeting.

12. My clients thereafter went to Colorado and met with the management of the Funds and described Frigitemp's business to them.

13. I then called Mr. Steinberg for an appraisal on the results of the meeting. He told me the Funds' management was of the preliminary opinion that while the rewards of an investment in Frigitemp might be great, so were the risks. He again proposed his settlement of $750,000 and I again told him it was unacceptable and reiterated my charges concerning the Funds and its investment advisor's misconduct.

14. In the course of my investigation of the Funds' claims against my clients, it became apparent to me that because of the Funds' misconduct they were more vulnerable to a lawsuit than were my clients. Nevertheless, since avoidance of litigation was my clients' wishes, I was anxious to arrive at a reasonable settlement with the Funds and continued efforts along that line.

Affidavit of Lloyd D. Feld in Opposition to Defendants' Motion to Dismiss or to Transfer

15. As a last resort, my partner, Joseph S. Lefrak, and I met with Mr. Steinberg and proposed a settlement to the Funds. In essence, the proposed arrangement involved an investment of $2,000,000 by the Funds which would yield interest of 18% annually and be secured by Frigitemp's customers notes. In addition, the Funds' investment would be convertible into Frigitemp shares at a conversion price to be agreed upon. We believed this to be an excellent investment for the Funds and extremely generous in view of their misconduct. Mr. Steinberg rejected this proposal out of hand and stormed out of our office stating that he would convey our proposal to the Funds but would recommend its rejection and resign as counsel if it were accepted. He also stated that he would now get the approval of the Funds' management to file its complaint against my clients. At this point, I concluded that further attempts at settlement were hopeless.

16. Following this last meeting with Mr. Steinberg, we prepared and filed the complaint in this action and in this forum where all of the existing litigation on the same subject matter is presently pending.

17. Mr. Steinberg called me after he received the complaint and was very angry that Frigitemp and the individual plaintiffs had commenced an action against his clients. He stated that the principal reason for his anger was that I had not called him to tell him I was going to sue his clients. I told him that I regretted his attitude but that I thought that my conduct had been proper.

/s/ Lloyd D. Feld
LLOYD D. FELD

(Sworn to by Lloyd D. Feld on May 16, 1974.)

Affidavit of Gerald D. Fischer in Opposition to Motions of Defendants Financial Programs, Inc. Robert E. Anton and John M. Butler

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GERALD D. FISCHER, being duly sworn, deposes and says:

1. I am associated with the firm of Blackman Lefrak Myerson & Feld, counsel to plaintiffs herein. I submit this affidavit in opposition to the motion of the defendants Financial Programs, Inc., Robert E. Anton ("Anton") and John M. Butler ("Butler") to dismiss and strike the complaint, or in the alternative, to transfer the action to the United States District Court for the District of Colorado; to dismiss as to defendants Anton and Butler for lack of jurisdiction over the person; and to quash a notice of deposition to take the deposition of the moving defendants.

2. The affidavits and memorandum of law heretofore filed in opposition to the motion to dismiss or transfer the action to Colorado, made on behalf of defendants Financial Dynamics Fund, Inc., Financial Industrial Fund, Inc. and Financial Venture Fund, Inc. (the "Funds"), are submitted in opposition to the instant motion of defendants Financial Programs, Inc., Anton and Butler.

Affidavit of Gerald D. Fischer in Opposition to Motions of Defendants Financial Programs, Inc., Robert E. Anton and John M. Butler

3. With respect to the motion to dismiss for lack of jurisdiction over the person of Messrs. Anton and Butler, and their contacts with New York, the following should be noted:

A. The defendants are alleged to have committed all of the acts set forth in the complaint as part of a conspiracy to artificially manipulate the market price of Frigitemp's shares.

B. The complaint and the affidavits submitted by the plaintiffs on these several motions demonstrate that the Funds, their investment manager, Financial Programs, Inc., Anton and Butler, together with Bernard Deutsch, a stockbroker with the New York firm of Jaffe & Co., caused the Funds to purchase through Mr. Deutsch and Jaffe & Co., here in New York, 142,100 shares of Frigitemp common stock. Plaintiff expects to establish upon deposition that these transactions were executed by Mr. Deutsch in New York through the facilities of his New York brokerage firm and resulted in an artificial manipulation of the price of Frigitemp stock. Similarly, plaintiffs believe, and will establish through depositions, that those same shares were sold through Mr. Deutsch and Jaffe & Co. here n New York, resulting in an accelerated decline in the price of Frigitemp stock.

C. As part of the conspiracy to manipulate the price of the shares of Frigitemp, defendant Financial Venture Fund, Inc. purchased in August 1969 a $1,000,000 debenture of Frigitemp. The purchase took place here in New York and was accomplished by the delivery of a check for $1,000,000 to Frigitemp at a closing held here in New York.

In connection with that transaction, the individual plaintiffs were required to contribute 100,000 shares of Frigitemp common stock to the capital of Frigitemp. Further, in connection with that sale, Frigitemp disclosed to the Funds material, confidential and non-public information both orally and in the agreement of debenture itself. The agreement of debenture, together with the disclosures contained therein, were sent by Frigitemp from New York to the Funds in Colorado who, in turn, used that information to effect the purchase of Frigitemp common stock, through Mr. Deutsch here in New York.

D. The affidavit of defendant Anton discloses that in the Summer of 1971 he met with Frigitemp in New York to discuss interest payments on the debenture. He admits that as an officer of Financial Dynamics Fund, Inc. he purchased Frigitemp's stock for said fund. The details of his involvement in those purchases are not given and plaintiffs do not presently have any knowledge as to Mr. Anton's contacts with this State in connection with the purchases. The only reasonable inference, however, is that those purchases were made through Mr. Deutsch and his brokerage firm here in New York. How many trips and visits he made to New York in connection with the Fund's massive acquisition of Frigitemp's stock is not disclosed.

E. Mr. Anton also admits in his affidavit that he participated in the sale of the Frigitemp stock. Similarly, no details of how that sale was made are given.

F. With respect to the affidavit of defendant Butler, he admits that he reviewed the closing documents on the purchase of the debenture and participated in several telephone conversations with Frigitemp in New York in connection

with the purchase of the debenture (affidavit of John M. Butler, para. 7). He thus admits that he received from Frigitemp the very documents which contained much of the non-public information furnished to Financial Venture Fund, Inc. Similarly, as in the affidavit of defendant Anton, Butler admits that he was involved in the sale of the Frigitemp stock but he does not state the specifics of his involvement and what connection those sales had with the State of New York.

4. The foregoing raises many questions with respect to defendants' contacts with the State of New York directly, and through Mr. Deutsch, their co-conspirator in manipulating the price of Frigitemp stock. Since the question of jurisdiction in this case is directly intertwined with the relationships between Mr. Deutsch and the defendants, plaintiffs have sought to take the defendants' depositions. Plaintiffs urge that they should be permitted to take the deposition of the defendants on all of the claims in controversy. However, in the event that the Court so directs, plaintiffs would be amenable to proceeding to take testimony solely on the issue of jurisdiction in order to establish all of the facts relating to defendants' contacts with the State of New York. Plaintiffs submit that until such depositions are taken of defendants Financial Programs, Inc., Anton and Butler, the full extent of said defendants' contacts with the State of New York cannot be determined. Plaintiffs believe that on the basis of the facts presently before the Court, there is sufficient basis on which to deny defendants' motion with respect to jurisdiction. However, in the event that the present record is not deemed sufficient to support jurisdiction, plaintiffs respectfully request that

defendants Financial Programs, Inc., Anton and Butler be directed to testify with respect to their involvement in the matters in controversy.

5. With respect to the aspect of defendants' motion relating to the place where depositions will be held, plaintiffs consent to the holding of the depositions in Colorado with each party bearing its own costs and expenses in connection therewith.

6. On the basis of the facts set forth herein and in the accompanying memorandum of law, and on the basis of the answering affidavits and memorandum of law submitted by plaintiffs in opposition to the companion motions to dismiss and to strike the complaint or to transfer the action to Colorado, plaintiffs respectfully request that the several motions of defendants Financial Programs, Inc., Anton and Butler be, in all respects, denied.

/s/ Gerald F. Fischer
GERALD D. FISCHER

(Sworn to by Gerald D. Fischer on May 20, 1974.)

Reply Affidavit of Alan Steinberg in Support of Fund Defendants' Motion to Dismiss or to Transfer

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 CHT

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ALAN STEINBERG, being duly sworn, deposes and says:

1. Defendants Financial Industrial Fund, Inc. ("FIF"), Financial Dynamics Fund, Inc. ("FDF") and Financial Venture Fund, Inc. ("FVF") have filed with this Court a memorandum, together with supporting affidavits, in support of a motion to dismiss and strike pursuant to Rules 11, 12(b)(6) and 9(b) of the F.R.C.P. or in the alternative to transfer the action to the U. S. District Court for the District of Colorado pursuant to 28 U.S.C. 1404(a).

2. In response to defendants aforementioned motion, one Lloyd Feld, counsel for plaintiffs in the instant action, has filed an affidavit, sworn to on May 16, 1974, which is replete with misleading characterizations, half-truths and untruths. Accordingly, in an effort to ensure that this Court has an adequate opportunity to fully evaluate defendants' motion as well as the facts and circumstances which give rise to the present controversy, the Court should be aware of certain additional information hereinafter described. While in some instances, Feld's statements may not bear directly on the substance of the Fund's motion,

these statements should nevertheless be brought to the Court's attention as further evidence of the plaintiff's lack of propriety in initiating and pursuing this action.

3. In paragraph four of Feld's affidavit, Feld states that I told him ". . . that the Fund's shares of Frigitemp had been sold as a result of a managerial decision to indiscriminately dispose of all securities which had been recommended by Bernard Deutsch." Mr. Feld's statement is untrue. I advised Mr. Feld that the Funds had disposed of Frigitemp common stock in several large block transactions. The disposition of over-the-counter issues such as Frigitemp common stock in block transactions is not uncommon or unlawful. At no time did I state, suggest or imply that the Funds indiscriminately sold Frigitemp common stock or any other security.

4. Paragraph four of Feld's affidavit states that I "stated that if the Funds were to assert any claims against Frigitemp he was prepared to recommend to the Funds that they settle such claims for not more than $300,000, because he was of the opinion that there were many defects in the Funds' claims." Feld's statement is in part untrue and in part a misleading characterization of our conversation. With regard to the Funds' claims resulting from their approximately $1.5 million loss in Frigitemp common stock, Feld asked me what I considered to be a reasonable settlement figure. I advised Feld that in circumstances where the parties were disposed to settle claims without litigation, I considered as reasonable a 20% rule of thumb as a base figure and accordingly a cash settlement of not less than $300,000 might be acceptable to the Funds provided that such settlement could be effected without the necessity of

the Funds incurring the costs and expenses of pursuing such settlement through years of litigation. At no time did I ever state, suggest or imply that I was of the opinion that there were many defects in the Funds' claims. Furthermore, at no time did I state, suggest or imply that the Funds had engaged in any wrongdoing or misconduct in connection with Frigitemp or any other securities.

5. In paragraph seven of Feld's affidavit, Feld states that he told me "that the conduct of FVF and its investment advisor in purchasing Frigitemp's Debenture was reckless and irresponsible, and had concluded there were unlawful ulterior motives involving this investment. I also told him that I regarded the conduct of the Funds in cornering the market for Frigitemp shares as tantamount to a manipulation." No such statements were made to me by Feld.

6. In paragraph four of Feld's affidavit, Feld states that I told him FVF sold Frigitemp's $1,000,000 debenture because the interest rate was very low compared to prevailing rates in April, 1972. While the motivation behind FVF's sale of the Frigitemp debenture is not in issue, I do not recall making such statement to Feld, because as I recall, I was not at that time aware of the prevailing interest rates in April, 1972. I recall advising Feld that one of the principal reasons FVF sold the Frigitemp debenture was that it had experienced difficulty in getting Frigitemp to meet its interest payment commitments on the debenture.

7. In paragraph fifteen of Feld's affidavit, Feld states that I rejected his proposal out of hand and "stormed out of our office stating that he would convey our proposal

to the Funds but would recommend its rejection and resign as counsel if it were accepted. He also stated that he would now get the approval of the Funds management to file its complaint against my clients." Feld's statement is a misleading characterization of the conversation which took place. After presenting their proposal, a written copy of which was given to me, and after reviewing same, I stated that we were wasting our respective clients' money discussing a proposal which appeared to be directed more toward a new prospective investor rather than a previously defrauded investor and prospective plaintiff. I then advised Messrs. Feld and Lefrak that I would present their proposal to the Boards of Directors of the Funds but could not recommend that the Boards accept their offer and would further recommend that the Boards authorize the Funds regular counsel to commence legal action against Frigitemp and certain of its officers. (See Steinberg affidavit April 29, 1974, paragraph 17.) In addition, I advised that as special counsel for publicly owned Funds, I could not be a party to a settlement of the type they proposed when I believed, based upon my investigation, that the Funds had sound, valid and substantial claims for damages against Frigitemp and certain of its officers. I added that if the Boards of the Funds wished to accept their proposal they would have to obtain other counsel as I felt I could not participate in effecting such a settlement.

8. In paragraph three of Feld's affidavit, Feld states that I represented that I "wished to obtain information concerning the transaction whereby in April, 1972, Frigitemp repurchased its $1,000,000 principal amount, 5% Convertible Subordinated Debenture, which it had sold to

Financial Venture Fund, Inc. . . ." and that I had assured him "that none of the information furnished to him would ever be used to the detriment of my clients." In an effort to ensure that there is no misunderstanding regarding this matter, the Court should be advised that I explained to Feld that my purpose in requesting a meeting was to discuss the circumstances surrounding the repurchase by Frigitemp in April, 1972, of the aforementioned debenture. (See Steinberg affidavit, April 29, 1974, paragraph 3.) In that regard Feld requested that, if he divulged any private information to me, I would not use such information obtained from him regarding Frigitemp's repurchase of the debenture against his clients. I advised Feld that I would honor his request which I have done. Frigitemp's role in the repurchase of the debenture has not formed the basis of any claim by the Funds against Frigitemp or any of its affiliates. In fact I know of no private information of any kind which Feld gave me which has been used or could be used against his clients. It would constitute a deception upon this Court to the extent that Feld would seek to have this Court infer that I dealt other than in good faith with him. Had Feld's conduct been of equal standard, this matter would not be before this Court.

Alan Steinberg
ALAN STEINBERG

(Sworn to by Alan Steinberg on May 30, 1974.)

Decision of the United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
74 Civ. 1335 (CHT)

[SAME TITLE]

TENNEY, *J.*

All six defendants in this action have moved, *inter alia,* for an order dismissing the complaint for failure to state a claim for which relief can be granted. Fed. R. Civ. P. 12(b)(6). For the reasons stated *infra,* their motion is granted.[1]

SUMMARY OF THE COMPLAINT

When a motion is made pursuant to Fed. R. Civ. P. 12(b)(6), the well-pleaded material allegations of the complaint are taken as true. Therefore, before the grounds for dismissal are discussed, the Court will attempt to summarize the material allegations of fact contained in the complaint.[2]

Plaintiff Frigitemp Corp. ("Frigitemp") is a New York corporation. The four individual plaintiffs—Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman—were stockholders of Frigitemp during the relevant period. Defendants Financial Dynamics Fund, Inc. ("FDF"), Financial Industrial Fund, Inc. ("FIF") and Financial Venture Fund, Inc. ("FVF") (collectively "The Funds") are publicly owned, open end investment companies, commonly known as mutual funds, located in Colorado. They are managed by defendant Financial Programs, Inc. The individual defendants named in the complaint—Robert Anton and John M. Butler—were officers and employees of the defendant corporations during the relevant period. Since Frigitemp's claims are severable from the individual plaintiffs' claims, the Court will first summarize Frigitemp's allegations.

Plaintiff Frigitemp alleges that, from March 1969 through March 1970, the Funds purchased in the open market a total of 142,100 shares of Frigitemp common stock, which constituted all but a small part of Frigitemp stock then available to the public. As a result, it is alleged, the price per share increased from $15.25 to $37.00. It is also alleged that on August 29, 1969, shortly after the open market purchases began, defendant FVF purchased from Frigitemp a $1,000,000 principal amount 5% convertible subordinated debenture and warrants to purchase 50,000 shares of Frigitemp common stock at prices between $17 and $19 per share ("The Debenture Purchase"). In connection with that Purchase, defendants are said to have acquired from Frigitemp certain "material, confidential and 'inside' information concerning the business and affairs of Frigitemp." (Complaint ¶ 17). The defendant Funds are alleged to have purchased the aforesaid 142,100 shares on the basis of this confidential and inside information. In February and March 1970, defendants FVF and FDF are alleged to have sold approximately 18,000 of their shares of Frigitemp stock for a profit of $130,000. In 1971, The Funds sold another 123,000 shares of their stock, thereby depressing the price of the stock to $8.00 per share.

It is alleged that all of these acts were done knowingly pursuant to a conspiracy to defraud Frigitemp and its shareholders. As its first claim for relief ("Claim #1"), plaintiff Frigitemp seeks, *inter alia*, to recover all profits defendants realized in connection with the purchase and sale of Frigitemp stock ($130,000) on the theory that defendants committed fraud and deceit. As its second claim for relief ("Claim #2"), Frigitemp requests the same relief on the theory that defendants' acts constituted violations of § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder, and § 17(a) of the Securities Act of 1933, 15 U.S.C. §77q(a).

The claims of the four individual plaintiffs ("Claim #3" and "Claim#4") are based upon the following set of facts. It is alleged that, as a condition of the Debenture Purchase, consummated on August 29, 1969, the four individual plaintiffs were required to contribute an aggregate of 100,000 shares of Frigitemp stock to the capital of Frigitemp, thereby reducing by that number the shares of Frigitemp stock then outstanding. It is alleged that, in requiring that this contribution be made, defendants failed to disclose certain "material" facts (Complaint ¶ 21):

> "[Defendants failed to disclose]
>
> (a) that defendants were causing and had caused The Funds to acquire all but a small part of the shares of Frigitemp available to the public;
>
> (b) that the condition that Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman contribute to the capital of Frigitemp 100,000 of its outstanding shares of common stock then held by said plaintiffs, was intended to reduce the number of shares outstanding by that number and cause an immediate increase in earnings per share of Frigitemp's common stock then owned by and to be acquired by The Funds." (Complaint, ¶ 21).

The four individual plaintiffs then go on to allege that, had they known these facts, they would not have contributed their shares, which were then selling on the open market for $21 per share.

Defendants are alleged to have acted intentionally and knowingly pursuant to a conspiracy. The four plaintiffs seek damages in the amount of $2,100,000 (100,000 shares X $21 per share) on the theory that defendants' acts con-

stituted violations of the federal securities law (Claim #3) and acts of common law fraud and deceit (Claim #4).

Claim #1

All defendants move to dismiss this claim—Frigitemp's common law fraud and deceit claim—on the ground that Frigitemp has no standing to sue since it was not the defrauded party.

Frigitemp, relying principally upon *Diamond* v. *Oreamuno*, 24 N.Y.2d 494, 301 N.Y.S.2d 78, 248 N.E.2d 910 (1969), and *Schein* v. *Chasen*, 478 F.2d 817 (2d Cir.), *vacated on other grounds*, 94 S. Ct. 1741 (1974), argues that it may indeed recover the profits defendants made as a result of their trading in Frigitemp stock on the basis of confidential and inside information. Their argument is as follows: The *Diamond* case provides that persons who acquire nonpublic information by virtue of their fiduciary relationship with the corporation, *e.g.*, officers and directors, must, if they exploit that information for personal profit, disgorge those profits to the corporation, even if that corporation has itself suffered no specific damages. The *Schein* case extends the holding of the *Diamond* case, providing that third parties who are not directors and officers of the corporation may be similarly held liable. Although the defendants in the instant case were neither officers nor directors of Frigitemp, they entered into a "special relationship" with Frigitemp upon receiving nonpublic information in connection with The Debenture Purchase. Consequently, defendants may be held liable to Frigitemp for profits made even though they are not fiduciaries in the conventional legal sense.

The Court has studied the legal authorities upon which Frigitemp relies and has concluded that the principle of liability set forth in the *Diamond* case, and extended by the *Schein* case, has no applicability to the instant case. The two cases, when read together, merely provide that persons who are not officers or directors of a corporation may be held liable to the corporation for profits made if they are "co-venturers" of a fiduciary of the corporation, engaged with the fiduciary in a "common enterprise" to misuse confidential corporate information. *Schein* v. *Chasen*, *supra*, 478 F.2d at 822-23. Since defendants are not alleged to be fiduciaries of Frigitemp and since they are not alleged to have acted in concert with a fiduciary of Frigitemp, the theory of liability set forth in *Diamond* and *Schein* would not permit Frigitemp to recover any profits defendants may have made. Consequently, the allegations which form the basis of Claim #1 fail to state a claim upon which relief may be granted.

Claim #2

Frigitemp's second claim predicates liability upon two sections of the federal securities laws. Defendants urge dismissal on the ground that Frigitemp was not a purchaser or seller of its securities during March 1969 through March 1970, when the Funds were allegedly purchasing large quantities of Frigitemp common stock on the open market. The Court is of the opinion that defendants' argument has merit.

Frigitemp cannot recover under § 17(a) of the Securities Act of 1933 since no facts are alleged to support the theory that Frigitemp was a purchaser. *Iroquois Industries, Inc.* v. *Syracuse China Corp.*, 417 F.2d 963, 966 (2d

Cir. 1969); *E. L. Aaron & Co., Inc.* v. *Free,* 55 F.R.D. 401, 402 (S.D.N.Y. 1972); *Continental Bank & Trust Co. of Salt Lake City* v. *Garfinkle,* 292 F. Supp. 709, 711-12 (S.D.N.Y. 1968).

Nor may Frigitemp sue under § 10(b) of the Securities Exchange Act of 1934 as a seller of securities. *Iroquois Industries, Inc.* v. *Syracuse China Corp., supra,* 417 F.2d at 966-70. The Supreme Court decision in *Superintendent of Insurance of New York* v. *Bankers Life & Cas. Co.,* 404 U.S. 6 (1971), does not, as Frigitemp argues, eliminate that requirement. *Haberman* v. *Murchison,* 468 F.2d 1305, 1311 n.5 (2d Cir. 1972); *G.A.F.* v. *Milstein,* 453 F.2d 709, 721, (2d Cir. 1971), *cert. denied,* 406 U.S. 910 (1972).

Consequently, Frigitemp's second claim for relief must also be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Claim #3

This claim, arising out of The Debenture Purchase transaction, charges violations of the federal securities laws. Defendants urge dismissal of this claim on the ground that the four individual plaintiffs have no standing to sue and state no facts from which it could be inferred that defendants had any duty of disclosure.

The claim that defendants violated § 17(a) of the Securities Act of 1933 cannot stand since plaintiffs' contribution can in no way be construed as a purchase *for value.* 15 U.S.C. § 77b(3). However, the failure to allege an exchange of shares *for value* does not necessarily preclude plaintiffs from suing under § 10(b) of the Securities Exchange Act of 1934. 15 U.S.C. § 78c(13) and (14); *International Controls Corp.* v. *Vesco,* 490 F.2d 1334, 1343-46 (2d Cir. 1974), *cert. denied,* 42 U.S.L.W. 3666 (U.S., June 3, 1974).

Defendants also challenge the § 10(b) claim on the ground that the alleged nondisclosures concerned information which was freely available to plaintiffs. It is well settled that a plaintiff who has actual or even constructive knowledge of the material information allegedly not disclosed will be barred from recovery under that section. *See, e.g., Johnson* v. *Wiggs*, 443 F.2d 803, 806 (5th Cir. 1971); *Hafner* v. *Forest Laboratories, Inc.*, 345 F.2d 167, 168 (2d Cir. 1965). The number of shares which The Funds had acquired by August 29, 1969, the date on which The Debenture Purchase was consummated, was a matter of public record. As defendants correctly point out, such information could have been ascertained from Frigitemp's stock ledger book. However, information regarding the number of Frigitemp shares which The Funds intended to obtain after August 29, 1969 was no a matter of public record.

It is also alleged that defendants failed to disclose the accounting effect of the contribution. Plaintiffs now concede that the accounting aspects are matters which they would have understood. They argue, however, that defendants should have disclosed the fact that The Funds would have been the principal beneficiaries of the contribution. Just as it would be difficult to argue that plaintiffs could have ascertained The Funds' future purchasing intentions, it would be equally as difficult to argue that the plaintiffs could have ascertained this second fact.

Assuming then, that as of August 29, 1969, defendants knew that The Funds would purchase nearly all of the Frigitemp common stock available to the public, that they intended that the contribution of 100,000 shares would primarily benefit them, and that all of this information was material, the question remains as to whether such facts, if

established, would permit recovery under § 10(b) of the Securities Exchange Act of 1934. The Court believes the answer to be in the negative.

In support of their position that such facts state a claim under § 10(b) and Rule 10b-5, plaintiffs merely state that "persons who have substantial positions in a corporation's securities have an affirmative duty to disclose [material] information [of the sort allegedly not disclosed here] to persons with whom they have securities dealings."[3] (Pls.' Memo in Opp. to Defs.' Motion to Dismiss, p. 21). Actually, the legal principle is not quite so broad. As stated in *Securities and Exchange Comm'n* v. *Texas Gulf Sulphur Co.*, 401 F.2d 833, 848 (2d Cir. 1968) (en banc), *cert. denied*, 394 U.S. 976 (1969),

> "[t]he essence of the Rule [10b-5] is that anyone who, trading for his own account in the securities of a corporation has 'access, directly or indirectly, *to information intended to be available only for a corporate purpose* and not for the personal benefit of anyone' may not take 'advantage of such information knowing it is unavailable to those with whom he is dealing,' i.e., the investing public. Matter of Cady, Roberts & Co., 40 SEC 907, 912 (1961). *Insiders*, as directors or management officers *are, of course, by this Rule, precluded from so unfairly dealing*, but the Rule is also applicable to one who may not be strictly termed an 'insider' within the meaning of Sec. 16(b) of the [Securities Exchange] Act [of 1934]. Cady, Roberts, supra. Thus, anyone in possession of material *inside* information must either disclose it to the investing public, or, if he is disabled from disclosing it in order to protect a corporate confidence, or he chooses not to do so, must abstain from trading in

> or recommending the securities concerned while such *inside* information remains undisclosed." (Emphasis supplied).

Thus, one of the elements for a claim under § 10(b) and Rule 10b-5 by one stockholder of a corporation against a fellow stockholder is that the defendant have access to corporate inside information not available to plaintiff.

Construed liberally, the only thing that is alleged by the four plaintiffs is that their fellow shareholders (The Funds) failed to disclose *material* information to them. It is not alleged that the information was confidential corporate *inside* information [4] and indeed, the information allegedly withheld could not be construed as corporate inside information. Consequently, even if the four plaintiffs were to establish the fact of nondisclosure and the materiality of the nondisclosure, they could not recover under § 10(b) and Rule 10b-5.

Claim #4

Nondisclosure is not actionable under the common law of fraud and deceit unless there is a duty to speak. That duty may arise when plaintiff and defendant are in a confidential, fiduciary relationship, when defendant has notice that plaintiff is acting upon a mistaken belief as to a material fact, or when defendant resorts to misrepresentation or some other artifice aimed at preventing disclosure of the facts. *See, e.g., Amend* v. *Hurley*, 293 N.Y. 587, 596, 59 N.E.2d 416 (1944); *Wood* v. *Amory*, 105 N.Y. 278, 281-82, 11 N.E. 636, 637 (1887); *Warren Bros. Co.* v. *New York State Thruway Auth.*, 34 App. Div. 2d 97,

99, 309 N.Y.S.2d 450, 452 (3d Dep't 1970); *Moser* v. *Spizzirro*, 31 App. Div. 2d 537, 295 N.Y.S.2d 188, 188-89, (2d Dep't 1968); *aff'd*, 25 N.Y.2d 941, 305 N.Y.S.2d 153, 252, N.E.2d 632 (1969); *Dash* v. *Jennings*, 272 App. Div. 1073, 1074, 74 N.Y.S.2d 881, 883 (2d Dep't 1947).

Since nondisclosure of material facts is all that is alleged in support of this claim, it must likewise be dismissed for failure to state a claim.

Conclusion

Accordingly, defendants' motion to dismiss all four claims set forth in the complaint is hereby granted.

So ordered.

Dated: New York, New York
December 5, 1974

Charles H. Tenney
U.S.D.J.

FOOTNOTES

[1] Defendants have also moved to strike the complaint pursuant to Fed. R. Civ. P. 11, to dismiss the complaint pursuant to Fed. R. Civ. P. 9(b), or in the alternative, to transfer the action to the United States District Court for the District of Colorado. Defendants Financial Programs, Inc., Butler and Anton have also moved to quash a notice of deposition and have asked for protective orders. Finally, defendants Anton and Butler have moved for an order dismissing the complaint as to them pursuant to Fed. R. Civ. P. 12(b)(2). Since this Court finds that all four claims set forth in the complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6), there is no need to decide the other motions now pending.

[2] Subject matter jurisdiction of this action is predicated upon 28 U.S.C. §§ 1331 and 1332, § 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, and § 22 of the Securities Act of 1933, 15 U.S.C. § 77v.

[3] The only case which plaintiffs cite in support of this broadly-worded proposition is *Chasins* v. *Smith, Barney & Co.*, 438 F.2d 1167 (2d Cir. 1970), a case which held that a broker-dealer which was a "market-maker" in certain securities, Rule 17a-9 (f)(1), 17 C.F.R. § 240.17a-9(f)(1), was liable under § 10(b) to a customer to which it failed to disclose that fact while recommending that the customer purchase the securities. That case does not have any applicability to the instant case.

[4] In this connection, it might be noted that, although defendants are accused by *Frigitemp* of having traded in Frigitemp securities on the basis of "material, confidential and 'inside' information concerning the business and affairs of Frigitemp", (Complaint ¶ 17), defendants are merely charged *here* with a failure to disclose "material information" (Complaint ¶ 21).

Judgment Dismissing the Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
74 Civil 1335 (CHT)

—o—

FRIGITEMP CORP., GERALD LEE, GERALD ROSS, HENRY GUTMAN and LEON GUTTMAN

Plaintiffs,

—against—

FINANCIAL DYNAMICS FUND, INC., FINANCIAL INDUSTRIAL FUND, INC., FINANCIAL VENTURE FUND, INC., FINANCIAL PROGRAMS, INC., ROBERT E. ANTON and JOHN M. BUTLER

Defendants.

—o—

Defendants having moved for an order dismissing the complaint pursuant to Rule 12(b)(6), of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Charles H. Tenney, United States District Judge, and the Court thereafter on December 6, 1974, having handed down its memorandum opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants Financial Dynamics Fund, Inc., Financial Industrial Fund, Inc., Financial Venture Fund, Inc., Financial Programs, Inc., Robert E. Anton and John M. Butler, have judgment against plaintiffs Frigitemp Corp., Gerald Lee, Gerald Ross, Henry Gutman and Leon Guttman, dismissing all four (4) claims of the complaint.

Raymond F. Burghardt
RAYMOND F. BURGHARDT
Clerk

Dated: New York, N.Y.
December 12, 1974

Plaintiffs' Notice of Appeal to the United States Court of Appeals

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 Civ. 1335 (CHT)

———o———

FRIGITEMP CORP., GE[illegible]LD LEE, GERALD ROSS, HENRY GUTMAN and LEON GUTTMAN,
Plaintiffs,

against

FINANCIAL DYNAMICS FUND, INC., FINANCIAL INDUSTRIAL FUND, INC., FINANCIAL VENTURE FUND, INC., FINANCIAL PROGRAMS, INC., ROBERT E. ANTON and JOHN M. BUTLER,
Defendants.

———o———

Sirs:

PLEASE TAKE NOTICE that plaintiffs do hereby appeal to the United States Court of Appeals, Second Circuit from an order of Judge Charles H. Tenney dated December 5, 1974 and a judgment entered thereon in the office of the Clerk of this Court on or about December 12, 1974 granting defendants' motion to dismiss the complaint for failure to state a claim for which relief can be granted and plaintiffs

appeal from each and every part of said order and judgment as well as the whole thereof.

Dated: December 31, 1974

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Service of ~~three (3)~~ ONE (1) copies of the within
is hereby admitted
this 21st day of March, 1975

BUIOWSKY, SCHWENKE & DEVINE

Attorney(s) for E. Mikalus
2:50 pm

Service of ~~three (3)~~ ONE (1) copies of the within
is hereby admitted
this 21st day of March, 1975

Skadden Arps Slate Meagher & Flom
~~Attorney(s) for~~
of counsel for Ireland, Stapleton, Pryor & Holmes, attorneys for defendant